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Case = 6
No. 10936

Vol
2393
United States
Circuit Court of Appeals

For the Ninth Circuit.

GEORGE S. GAYLORD,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

GERTRUDE H. GAYLORD,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Transcript of the Record
In Two Volumes
VOLUME I
Pages 1 to 303

Upon Petitions to Review Decisions of the Tax Court
of the United States

FILED

Rotary Colorprint, 55 Eleventh Street, San Francisco 40

FEB 23 1945

PAUL P. O'BRIEN,
CLERK

No. 10936

United States
Circuit Court of Appeals

For the Ninth Circuit.

GEORGE S. GAYLORD,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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APPEARANCES:

For Taxpayer:

THOMAS A. G. DOCKWEILER

JAMES W. BONTEMS, C.P.A.

For Comm'r:

BYRON M. COON

Docket No. 109138

GEORGE S. GAYLORD,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DOCKET ENTRIES

1941

Nov. 10—Petition received and filed. Taxpayer notified. Fee paid.

Nov. 10—Copy of petition served on General Counsel.

Dec. 9 —Answer filed by General Counsel.

Dec. 9 —Request for hearing in Los Angeles filed by General Counsel.

Dec. 11—Notice issued placing proceeding on Los Angeles calendar.

Answer and request served.

1943

Feb. 18—Hearing set March 29, 1943 in Los Angeles, California.

Mar. 17—Application for subpoena to Bruce E. Bassett, Paul A. Martin, Mrs. Dyson Jackson, Harry E. Hudson and Jacob Braufman filed by General Counsel. 3/17/43 subpoenas (5) issued.

Apr. 23—Hearing had before Judge Turner on merits. Submitted. Appearance of James W. Bontems, C.P.A. filed. Petitioner's brief due June 2, 1943, respondent's—July 2, 1943. Petitioner's reply 7/17/43.

Apr. 12—Stipulation re exhibits filed at Los Angeles.

Apr. 20—Transcript of hearing of April 2, and 3, 1943 filed.

June 2 —Brief filed by taxpayer. 6/2/43 copy served on General Counsel.

July 2 —Reply brief filed by General Counsel. Served 7/3/43.

Aug. 2 —Motion for leave to file reply brief, reply brief lodged, filed by taxpayer. 8/2/43 granted.

Aug. 5 —Copy of motion and reply brief served on General Counsel.

1944

Feb 18—Findings of fact and opinion rendered. Turner, Judge, Div. 8. Decision will be entered under Rule 50. 2/18/44 copy served.

1944

Mar. 17—Motion for reconsideration of decision promulgated 2/18/44 filed by taxpayer. 3/18/44 Denied.

May 17—Computation for entry of decision filed by General Counsel.

May 17—Hearing set 6/21/44 on settlement.

June 19—Consent to settlement filed by taxpayer.

July 13—Revised computation of deficiency filed by General Counsel.

Aug. 2—Consent to settlement filed by taxpayer.

Aug. 4—Decision entered—Turner, J., Div. 8.

Sept. 30—Motion to fix amount of bond filed by taxpayer.

Oct. 2—Order fixing amount of bond at \$70,000.00 entered.

Oct. 6—Bond in the amount of \$70,000.00 approved and ordered filed.

Oct. 11—Petition for review by U.S. Circuit Court of Appeals, 9th Circuit, with assignments of error filed by taxpayer.

Oct. 11—Proof of service filed by taxpayer.

Nov. 13—Agreed statement of evidence filed.

Nov. 13—Agreed praecipe for record filed.

Nov. 22—Certified copy of order from U.S. Cir. Ct. of Appeals, 9th Ct. extending time to Dec. 30, 1944 to prepare & transmit record filed. [1*]

*Page numbering appearing at top of page of original certified Transcript of Record.

APPEARANCES

For Taxpayer:

THOMAS A. J. DOCKWEILER, Esq.,
JAMES W. BONTEMS, C.P.A.

For Comm'r:

BYRON M. COON, Esq.

Docket No. 109273

GERTRUDE H. GAYLORD,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DOCKET ENTRIES

1941

Nov. 26—Petition received and filed. Taxpayer notified. Fee paid.

Nov. 26—Copy of Petition served on General Counsel.

1942

Jan. 2—Answer filed by General Counsel.

Jan. 2—Request for hearing in Los Angeles filed by General Counsel.

Jan. 7—Notice issued placing proceeding on Los Angeles, Cal., calendar. Service of answer and request made.

1943

Feb. 18—Hearing set March 29, 1943, in Los Angeles, California.

1943

Mar. 17—Application for subpoena to Bruce E. Bassett, Paul B. Martin, Mrs. Dyson Jackson, Harry E. Hudson and Jacob Braufman filed by General Counsel. 3/17/43 subpoenas (5) issued.

Apr. 2, 3—Hearing had before Judge Turner on merits. Submitted. Appearance of James W. Bontems, C.P.A. filed. Petitioner's brief due 6/2/43. Respondent's 7/2/43—petitioner's reply 7/17/43.

Apr. 12—Stipulation re exhibits filed at Los Angeles.

Apr. 20—Transcript of hearing of April 2 and 3, 1943 filed.

Jun. 2—Brief filed by taxpayer. 6/2/43 copy served.

Jul. 2—Reply brief filed by General Counsel.

Aug. 2—Motion for leave to file reply brief, reply **brief** lodged, filed by taxpayer. 8/2/43 granted.

Aug. 5—Copy of motion and reply brief served on General Counsel.

1944

Feb. 18—Findings of Fact and opinion rendered, Turner, J. Div. 8. Decision will be entered under Rule 50. 2/18/44 copy served.

Mar. 17—Motion for reconsideration of decision promulgated 2/18/44 filed by taxpayer. 3/18/44 denied.

May 17—Computation for entry of decision filed by General Counsel.

1944

May 17—Hearing set 6/21/44 on settlement.

Jun. 19—Consent to settlement filed by taxpayer.

Jul. 14—Decision entered, Bolon B. Turner J. Div.
8.

Sep. 25—Motion to fix amount of bond filed by taxpayer. 9/25/44 order fixing amount of bond in the amount of \$12,500.00 entered.

Oct. 2—Bond in the amount of \$12,500.00 approved and ordered filed.

Oct. 11—Petition for review by U. S. Circuit Court of Appeals, 9th Circuit, with assignments of error filed by taxpayer.

Oct. 11—Proof of service filed by taxpayer.

Nov. 13—Agreed statement of evidence filed.

Nov. 13—Agreed praecipe for record filed.

Nov. 22—Certified copy of order from U. S. Cir. Ct. of Appeals, 9th Ct. extending the time to 12/30/44 to prepare and transmit record filed. [2]

United States Board of Tax Appeals

Docket No. 109138

GEORGE S. GAYLORD,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION

The above named petitioner hereby petitions for

a redetermination of the deficiency set forth by the commissioner of Internal Revenue in his notice of deficiency LA:IT:90D:PB, dated Sep 17 1941, and as a basis of his proceeding alleges as follows:

1. The petitioner is an individual with his residence at No. 639 Rosemont Avenue, Pasadena, California. The returns for the periods here involved were filed with the Collector for the Sixth District of California at Los Angeles, California.

2. The notice of deficiency (a copy of which is attached and marked Exhibit A) was mailed to the petitioner on the 17th day of September, 1941.

3. The taxes in controversy are income taxes for [3] the calendar years 1936, 1937, 1938 and 1939 and in the amount of \$49,518.76.

4. The determination of tax set forth in said notice of deficiency is based upon the following errors:

(I) The Commissioner of Internal Revenue (hereinafter for brevity referred to as "Commissioner") erred in determining that there was or is an income tax liability of the petitioner in the sum of \$27,486.36 or any other sum or amount whatsoever on or with respect to the or any income of the petitioner for the year 1936.

(II) The Commissioner erred in determining that there was or is a deficiency of \$17,835.82 or any other sum or amount whatsoever in or with respect to any such tax liability or that there was or is any deficiency or unpaid tax or liability therefor of the petitioner on or with respect to his income for the year 1936.

(III) The Commissioner erred in determining that there was or is an income tax liability of the petitioner in the sum of \$21,690.34 or any other sum or amount whatsoever on or with respect to the or any income of the petitioner for the year 1937.

(IV) The Commissioner erred in determining that there was or is a deficiency of \$12,033.50 or any other sum or amount whatsoever in or with respect to any such tax liability or that there was or is any deficiency or unpaid tax or liability therefor of the petitioner on or with respect to his income for the year 1937. [4]

(V) The Commissioner erred in determining that there was or is an income tax liability of the petitioner in the sum of \$17,188.72 or any other sum or amount whatsoever on or with respect to the or any income of the petitioner for the year 1938.

(VI) The Commissioner erred in determining that there was or is a deficiency of \$10,442.62 or any other sum or amount whatsoever in or with respect to any such tax liability or that there was or is any deficiency or unpaid tax or liability therefor of the petitioner on or with respect to his income for the year 1938.

(VII) The Commissioner erred in determining that there was or is an income tax liability of the petitioner in the sum of \$15,533.84 or any other sum or amount whatsoever on or with respect to the or any income of the petitioner for the year 1939.

(VIII) The Commissioner erred in determining

that there was or is a deficiency of \$9,206.82 or any other sum or amount whatsoever in or with respect to any such tax liability or that there was or is any deficiency or unpaid tax or liability therefor of the petitioner on or with respect to his income for the year 1939.

(IX) The Commissioner erred in determining that there was or is a total liability of \$81,899.26 or any other sum or amount whatsoever of the petitioner on or with respect to his income in or for the years 1936, 1937, 1938 and 1939 or any thereof. [5]

(X) The Commissioner erred in determining that there was or is a total deficiency of \$49,518.76 or any other sum or amount whatsoever on or with respect to the income taxes or any income tax or income tax liability of the petitioner on or with respect to the income of the petitioner for the years 1936, 1937, 1938 and 1939 or any of said years.

(XI) The Commissioner erred in determining or holding that the net income as adjusted for the taxable years 1936, 1937, 1938 and 1939 or for any of said years or any net income for said years or any thereof of the trust created by the declaration of trust dated November 7, 1935, made by George S. Gaylord and his wife Gertrude H. Gaylord, of which trust the petitioner and his said wife are first named trustees and their two daughters Margaret Gaylord Ruppel and Gertrude Gaylord (now Gertrude Gaylord Bruce) are two of the beneficiaries of said trust, constitutes or constituted or

is or ever was income of the petitioner and his said wife or either of them as grantors or grantor under the provisions of Section 22 (a), 166 and 167 of the Revenue Acts of 1936 and 1938 and of the Internal Revenue Code or under any of said provisions, or otherwise, or at all.

(XII) The Commissioner erred in determining or holding that 5/7ths or any other part of the net income of said trust as adjusted for each of the years 1936 to 1939, inclusive, or for any of said years, or any net income of said trust should be included in the recomputation or compu- [6] tation of the petitioner's taxable net income for the years 1936 to 1939, inclusive, or for any of said years.

(XIII) The Commissioner erred in determining or holding that for the purpose of computing the capital gains realized by said trust in the years 1936, 1937, 1938 and 1939 or in any of said years or the capital gains allegedly realized by the petitioner in the years 1936, 1937, 1938 and 1939 or any of said years from the sale of shares of the common capital stock of Marathon Paper Mills Company the statutory basis for computing gain or loss on each such sale was or is \$2.83542 per share instead of \$8.21 per share as stated in the income tax returns of said trust filed and in determining the statutory basis for computing gain or loss on each such share to be any sum or amount whatsoever less than \$10.988.

(XIV) The Commissioner erred in determining or holding that for the purpose of determining the statutory basis for computing gain or loss on each

or any such sale the fair market value of the 435 shares or any number of shares of the common stock of Menasha Printing and Carton Company received by the petitioner on or about August 15, 1917, or of any of said shares, in exchange for stock of Menasha Carton Company was or is \$100.00 per share or any other sum or amount whatsoever less than \$296.194 per share.

(XV) The Commissioner erred in determining or holding that while the petitioner's statutory basis for gain or loss upon the sale or other disposition of the bonds and [7] stock of Marathon Paper Mills Company received by the petitioner on or about October 31, 1927, in exchange for 3357 shares of the common stock of Menasha Printing and Carton Company is the same as the petitioner's basis in the shares given in that exchange, such basis should be apportioned 53.9967% to the bonds and 46.033% to the stock received in that exchange or should be apportioned at any other percentage than 54.21% to the bonds or than 45.79% to the stock received in that exchange.

(XVI) The Commissioner erred in determining (see Adjustments to Net Income Taxable Year Ended December 31, 1936, in said notice of deficiency) that there was or is additional income in the amount of \$39,271.98 or any other sum or amount whatsoever.

(XVII) The Commissioner erred in determining (see under same heading in said notice) that there was or is income from trust in the amount of \$31,290.73 or any other sum or amount whatsoever.

(XVIII) The Commissioner erred in determining (see under same heading in said notice) that there was or is capital gain in the amount of \$7,981.25 or any other sum or amount whatsoever.

(XIX) The Commissioner erred in determining (see under same heading in said notice) that there was or is total net income of \$92,051.12 or total net income adjusted of \$91,806.12 or total net income or total net income adjusted [8] of or in any other sum or amount whatsoever in excess of \$52,534.14.

(XX) The Commissioner erred in determining (see Explanation of Adjustment for taxable year ended December 31, 1936, in said notice of deficiency) that the portion of the income of what the Commissioner in his said notice of deficiency refers to as the "Gaylord Trust" held to be taxable to the petitioner was or is \$31,290.73 or any other sum or amount whatsoever, and in determining that any portion of the income of said Gaylord Trust is taxable to the petitioner.

(XXI) The Commissioner erred in determining (see said Explanation of Adjustments in said notice of deficiency) that there was or is addition to income by increase in capital gain in amount of \$6,749.50 or any other sum or amount whatsoever and in determining that there was or is any addition to income by or because of any increase in capital gain and in determining that there was any increase in capital gain in any sum or amount whatsoever.

(XXII) The Commissioner erred in determining that the net income of the trust was or is \$43,807.03 or any other sum or amount whatsoever in excess of \$37,357.53.

(XXIII) The Commissioner erred in determining that $\frac{5}{7}$ ths or \$31,290.73 or any portion or amount of the net income of said trust was or is taxable to the petitioner.

(XXII) The Commissioner erred in determining (see Computation of Tax Taxable Year Ended December 31, 1936, in [9] said notice of deficiency) that there was or is net income adjusted or otherwise in the sum of \$91,806.12 or any other sum or amount whatsoever in excess of \$52,534.14 or a balance (surtax net income) in the sum of \$88,906.12 or any other sum or amount whatsoever in excess of \$49,634.14 or net income subject to normal tax in the sum of \$88,606.12 or any other sum or amount whatsoever in excess of \$49,334.14.

(XXV) The Commissioner erred in determining (see said Computation of Tax in said notice of deficiency) that there was or is a normal tax at 4% on \$88,606.12 or on any sum or amount whatsoever in excess of \$49,334.14, or a normal tax of \$3,544.24 or any other sum or amount whatsoever in excess of \$1,993.37, or that there was or is surtax on the sum of \$88,906.12 or on any other sum or amount whatsoever in excess of \$49,634.14, or surtax in the amount of \$23,942.12 or any other sum or amount whatsoever in excess of \$7,601.22, or that the correct or any income tax liability of the petitioner on or with respect to his income for

the calendar year 1936 was or is \$27,486.36 or any sum or amount whatsoever in excess of \$9,574.59, or that there is any deficiency of income tax in the amount of \$17,835.82 or any other sum or amount whatsoever.

(XXVI) The Commissioner erred in determining (see Adjustments to Net Income Taxable Year Ended December 31, 1937, in said notice of deficiency) that there was or is additional income and unallowable deduction or additional [10] income or unallowable deduction in the sum of \$28,605.02 or any other sum or amount whatsoever, or that there was or is income from trust taxable to petitioner in the sum of \$23,623.27 or any other sum or amount whatsoever, or that there was or is capital gain of \$4,514.65 or any other sum or amount whatsoever by way of additional income, or that financial expense in the sum of \$467.10 or any other sum or amount whatsoever should be disallowed, or that there was or is total net income of \$81,404.49 or a total net income adjusted of \$81,159.49 or total net income or total net income adjusted of or in any other sum or amount whatsoever in excess of \$52,554.47.

(XXVII) The Commissioner erred in determining (see Explanation of Adjustments for taxable year ended December 31, 1937, in said notice of deficiency) that \$23,623.27 is taxable to the petitioner as income of said Gaylord Trust and in determining that any income of said Gaylord Trust is taxable to the petitioner.

(XXVIII) The Commissioner erred in deter-

mining (see said Explanation of Adjustments in said notice of deficiency) that there was or is addition to income of said trust by increase in capital gain in the sum of \$2,576.80, or by any increase in any capital gain or in any sum or amount whatsoever, and that the net income of trust as adjusted or otherwise was or is \$33,072.58 or any sum or amount whatsoever in excess of \$30,498.78.

(XXIX) The Commissioner erred in determining that [11] 5/7ths or any part of the net income of said trust was or is taxable to the petitioner or that the sum of \$23,623.27 or any other sum or amount whatsoever of the net income of said trust as adjusted or of any net income of said trust or of any income of said trust was or is taxable to the petitioner.

(XXX) The Commissioner erred in determining or holding that the deduction of \$517.10 claimed in the petitioner's return for attorney's fees should be disallowed as to \$467.10 or in any other sum or amount whatsoever or that the sum of \$467.10 referred to in said notice of deficiency was or is not an expense incurred in carrying on a trade or business within the meaning of Section 23a of the Revenue Act of 1936 or that such amount is not an allowable deduction.

(XXXI) The Commissioner erred in determining (see Computation of Tax Taxable Year Ended December 31, 1937, in said notice of deficiency) that the petitioner's net income for or with respect to the calendar year 1937 as adjusted or otherwise was or is \$81,159.49 or any other sum or amount

whatsoever in excess of \$52,554.47 or that the balance (surtax net income) was or is \$78,259.49 or any other sum or amount whatsoever in excess of \$49,654.47 or that the net income subject to normal tax was or is \$77,959.49 or any other sum or amount whatsoever in excess of \$49,354.47.

(XXXII) The Commissioner erred in determining (see said Computation of Tax in said notice of deficiency) that petitioner was or is liable for normal tax at 4% on \$77,959.49 or any other sum or amount whatsoever in excess of \$49,354.47 [12] or that the petitioner was or is liable for normal tax in the amount of \$3,118.38 or any other sum or amount whatsoever in excess of \$1,974.18 or that the petitioner is liable for surtax on \$78,259.49 or on any other sum or amount whatsoever in excess of \$49,654.47 or that there was or is surtax in the amount of \$18,581.96 or any other sum or amount whatsoever in excess of \$7,525.71 or that the total tax is \$21,700.34 or any other sum or amount whatsoever in excess of \$9,499.89 or that the correct income tax liability was or is \$21,690.34 or any other sum or amount whatsoever in excess of \$9,489.89 or that there is deficiency of income tax in the amount of \$12,033.50 or any other sum or amount whatsoever or that there is any deficiency in any amount whatsoever for or with respect to any tax on any income of the petitioner for, in or with respect to the year 1937.

(XXXIII) The Commissioner erred in determining (see Adjustments to Net Income Taxable

Year Ended December 31, 1938, in said notice of deficiency) that there was or is additional income and unallowable deductions or additional income or any unallowable deduction or deductions in the total sum of \$32,510.65 or any other sum or amount whatsoever in excess of \$491.82 and in determining that there was or is income from trust taxable to petitioner in the sum of \$18,074.66 or any other sum or amount whatsoever or any income from any trust taxable to the petitioner and in determining that there was or is any long-term capital gain in the sum of \$8,868.06 or any other sum or amount whatsoever taxable as additional [13] income to the petitioner and in determining that loss in the amount of \$5,076.11 or any part thereof should be disallowed.

(XXXIV) The Commissioner erred in determining that there was or is net income adjusted or otherwise in the amount of \$75,146.75 or any other sum or amount in excess of \$43,127.92.

(XXXV) The Commissioner erred in determining (see Explanation of Adjustments for Taxable Year Ended December 31, 1938, in said notice of deficiency) that \$18,074.66 or any part thereof or any other sum or amount whatsoever is taxable to the petitioner as income of said Gaylord Trust and in determining that any income of said Gaylord Trust in or for the calendar year 1938 is taxable to the petitioner, and in determining that the deduction of \$15,899.86 for amount distributable to beneficiaries or any part of said sum or amount

should be disallowed, and in determining that there was or is increase in long-term capital gain in the sum of \$2,687.29 or any increase in any capital gain in any sum or amount whatsoever, and in determining that the loss of \$5,076.11 claimed by the petitioner or any part thereof should be disallowed, and in determining that the net income of trust as adjusted was or is \$25,304.53 or any other sum or amount whatsoever in excess of \$1,641.27.

(XXXVI) The Commissioner erred in determining that the petitioner was liable for 5/7ths or any proportion or part whatsoever of the income of said Gaylord Trust for, [14] in or with respect to the calendar year 1938 or that 5/7ths or any proportion whatsoever of the income of said trust was or is the portion of the petitioner or that the petitioner was or is liable for \$18,074.66 net income of said trust or any part thereof or any income from said trust.

(XXXVII) The Commissioner erred in determining or holding (see said Explanation of Adjustments in said notice of deficiency) that no deductible loss was sustained by reason of the demolition of the building in Santa Monica, California, referred to in the return of income of said trust for the calendar year 1938 and referred to in said notice of deficiency and that no deductible loss in the sum of \$5,076.11 was sustained by petitioner by reason of the demolition of said building in said year.

(XXXVIII) The Commissioner erred in determining (see said Explanation of Adjustments

in said notice of deficiency) that the amount of \$5,076.11 deducted in the petitioner's return of his income for the calendar year 1938 as representing his proportionate share of loss sustained in that year by reason of the voluntary demolition of a building in Santa Monica, California, should be disallowed.

(XXXIX) The Commissioner erred in determining (see Computation of Tax Taxable Year Ended December 31, 1938, in said notice of deficiency) that there was or is net income adjusted or otherwise in the sum of \$75,146.75 or any other sum or amount whatsoever in excess of \$43,127.92, or that there was or is a balance (surtax net income) in the sum [15] of \$72,646.75 or any sum or amount whatsoever in excess of \$40,227.92, or that there was or is net income subject to normal tax in the sum of \$72,346.75 or any other sum or amount whatsoever in excess of \$39,927.92.

(XL) The Commissioner erred in determining (see said Computation of Tax in said notice of deficiency) that there was or is normal tax at 4% on \$72,346.75 or on any other sum or amount whatsoever in excess of \$39,927.92 or normal tax in the sum of \$2,893.87 or any other sum or amount whatsoever in excess of \$1,597.12, or that there was or is surtax on \$72,646.75 or on any other sum or amount whatsoever in excess of \$40,227.92 or surtax in the amount of \$15,998.10 or any other sum or amount whatsoever in excess of \$5,174.70 or total tax under Sections 11 or 12 or either thereof in

the sum of \$18,891.97 or any other sum or amount whatsoever in excess of \$6,771.82.

(XLI) The Commissioner erred in determining (see said Computation of Tax in said notice of deficiency) that under alternative tax Section 117 (c) (1) Revenue Act of 1938 there was or is net income adjusted or otherwise in the amount of \$75,146.75 or any other sum or amount whatsoever in excess of \$43,127.92, or that there was or is net long-term capital gain in the amount of \$45,599.54 or any other sum or amount whatsoever in excess of \$36,731.86 or that there was or is ordinary net income in the amount of \$29,547.21 or any other sum or amount whatsoever in [16] excess of \$6,396.06 or that there was or is balance (surtax net income) in the sum of \$27,047.21 or any other sum or amount whatsoever in excess of \$3,896.06, or that there was or is net income subject to normal tax in the sum of \$26,747.21 or any other sum or amount whatsoever in excess of \$3,596.06 or that there was or is normal tax at 4% on \$26,747.21 or on any other sum or amount whatsoever in excess of \$3,596.06 or normal tax in the sum of \$1,069.89 or any other sum or amount whatsoever in excess of \$143.84, or that there was or is surtax on \$27,047.21 or on any other sum or amount whatsoever or surtax in the amount of \$2,438.97 or any other sum or amount whatsoever, or that there was or is partial tax in the sum of \$3,508.86 or any other sum or amount whatsoever in excess of \$143.84 or that 30% of net long-term capital gain was or is \$13,679.86 or any sum or

amount whatsoever in excess of \$11,019.44 or that alternative tax or correct income tax liability was or is \$17,188.72 or any other sum or amount whatsoever in excess of \$6,746.10.

(XLII) The Commissioner erred in determining (see said Computation of Tax in said notice of deficiency) that there was or is deficiency of income tax in the sum of \$10,442.62 or any other sum or amount whatsoever on or with respect to the income of the petitioner for the calendar year 1938.

(XLIII) The Commissioner erred in determining (see Adjustments to Net Income Taxable Year Ended December 31, 1939, in said notice of deficiency) that there was or [17] is additional income and unallowable deductions or additional income or any unallowable deductions or deduction in the sum of \$29,783.52 or any sum or amount whatsoever in excess of \$1,016.69, or that there was or is income from trust taxable to the petitioner of \$18,002.94 or any other sum or amount whatsoever or any income from any trust whatsoever taxable to the petitioner or that there was or is long-term capital gain of \$5,907.89 or any other sum or amount whatsoever, or that farm loss of \$3,456.00 or any part thereof should be disallowed, or that storm loss of \$1,400.00 or any part thereof should be disallowed, or that there was or is net income adjusted or otherwise of \$70,922.89 or any other sum or amount whatsoever in excess of \$42,156.06.

(XLIV) The Commissioner erred in determining (see Explanation of Adjustments for taxable year ended December 31, 1939, in said notice of deficiency) that \$18,002.94 of the income of said Gaylord Trust or any part of said sum or of any income of said trust was or is taxable to the petitioner, and in determining that deduction of \$22,465.39 for amount distributable to beneficiaries or any part of said sum should be disallowed, and in determining that there was or is increase in long-term capital gain in amount of \$1,074.92 or any other sum or amount whatsoever or any increase in any long-term capital gain whatsoever, and in determining that the net income of trust as adjusted was or is the sum of \$25,204.12 or any other sum or amount what- [18] soever in excess of \$1,663.81.

(XLV) The Commissioner erred in determining (see said Explanation Of Adjustments in said notice of deficiency) that 5/7ths or any part or portion of the net or any income of said Gaylord Trust was or is taxable to the petitioner and in determining that \$18,002.94 or any part thereof was or is taxable to the petitioner.

(XLVI) The Commissioner erred in determining (see said Explanation Of Adjustments in said notice of deficiency) that a deduction of \$4,320.00 which was taken by the petitioner for loss sustained in the taxable year 1939 by reason of 432 pear trees valued at \$10.00 each having been voluntarily pulled in 1939 to make room for more profitable crops and

livestock should be disallowed or that any part of said sum claimed by the petitioner as a deduction should be disallowed and in determining that loss in the amount of \$864.00 only should be allowed and that said sum of \$4,320.00 was or is not a deductible loss.

(XLVII) The Commissioner erred in determining (see said Explanation Of Adjustments in said notice of deficiency) that the deduction of \$2,650.00 taken and claimed by the petitioner in his return as representing his one-half of a loss of \$5,300.00 which resulted from destruction by storm of ornamental trees on residence property owned by the petitioner and his wife Gertrude H. Gaylord should be disallowed and in allowing only \$1,250.00 of said deduction of \$2,650.00 so taken and claimed by the petitioner. [19]

(XLVIII) The Commissioner erred in determining (see Computation Of Tax Taxable Year Ended December 31, 1939, in said notice of deficiency) that net income adjusted or otherwise was or is \$70,922.89 or any other sum or amount whatsoever in excess of \$42,156.06, and in determining that there was or is balance (surtax net income) of \$68,422.89 or any other sum or amount whatsoever in excess of \$39,656.06, and in determining that net income subject to normal tax was or is \$68,122.89 or any other sum or amount whatsoever in excess of \$39,356.06.

(XLIX) The Commissioner erred in determining (see said Computation Of Tax in said notice of deficiency) that there was or is normal tax at

4% on \$68,122.89 or on any other sum or amount whatsoever in excess of \$39,356.06 or that there was or is normal tax of \$2,724.92 or any other sum or amount whatsoever in excess of \$1,574.24 or that there was or is surtax on \$68,422.89 or on any other sum or amount whatsoever in excess of \$39,656.06 or that there was or is surtax of \$14,181.84 or surtax in any other sum or amount whatsoever in excess of \$5,037.45 or that there was or is total tax under Sections 11 and 12 or either thereof in the sum of \$16,906.76 or any other sum or amount whatsoever in excess of \$6,611.69.

(L) The Commissioner erred in determining (see said Computation Of Tax in said notice of deficiency) that under alternative tax, Section 117 (c) (1) I.R.C. there was or is net income adjusted or otherwise of \$70,922.89 or any [20] other sum or amount in excess of \$42,156.06, and in determining that there was or is net long-term capital gain of \$35,602.44 or any other sum or amount whatsoever in excess of \$29,694.55, and in determining that there was or is ordinary income in the sum of \$35,320.45 or any other sum or amount whatsoever in excess of \$12,461.51, and in determining that there was or is balance (surtax net income) of \$32,820.45 or any other sum or amount whatsoever in excess of \$9,961.51, and in determining that there was or is net income subject to normal tax of \$32,520.45 or any other sum or amount whatsoever in excess of \$9,661.51.

(LI) The Commissioner erred in determining (see said Computation Of Tax in said notice of de-

iciency) under said alternative tax that there was or is normal tax at 4% on \$32,520.45 or on any sum or amount whatsoever in excess of \$9,661.51 or that there was or is normal tax at 4% in the amount of \$1,300.82 or any other sum or amount whatsoever in excess of \$386.46 or that there was or is surtax on \$32,820.45 or on any other sum or amount whatsoever in excess of \$9,961.51 or that there was or is surtax in the amount of \$3,552.29 or any other sum or amount whatsoever in excess of \$297.69 or that there was or is partial tax of \$4,853.11 or any other sum or amount whatsoever in excess of \$684.15 or that 30% of net long-term capital gain was or is \$10,680.73 or any other sum or amount whatsoever in excess of \$8,908.37 or that there was or is alternative tax or correct income tax liability of \$15,533.84 or any other sum or amount [21] whatsoever in excess of \$9,592.52.

(LII) The Commissioner erred in determining (see said Computation Of Tax in said notice of deficiency) that there was or is deficiency of income tax of \$9,206.82 or any sum or amount whatsoever, and in determining that there was any deficiency of income tax of any amount for, on or with respect to the income of the petitioner in or for the calendar year 1939.

5. The facts upon which the petitioner relies as the basis of this proceeding are as follows:

(a) The trust mentioned and referred to in said notice of deficiency and which is sometimes described in said notice as the Gaylord Trust was and is a trust originally created and provided for

in that certain declaration of trust dated the 7th day of November, 1935, wherein the petitioner George S. Gaylord and his said wife Gertrude H. Gaylord are named and referred to as trustees, which said declaration of trust was recorded September 28, 1937, in the office of the County Recorder of Los Angeles County, California, in Book 15288 at Page 94 of Official Records of said County. Said declaration of trust was also filed for record in the office of the Clerk of the County Court, Cameron County, Texas, on the 29th day of January, 1938, and recorded February 1, 1938, in Deed Record of said county, Volume 277 on pages 593-9, and was also filed for record in the office of the Clerk, County Court, Hidalgo County, Texas, March 18, 1938, [22] and recorded March 24, 1938, in Volume X, pages 594-600, of the Miscellaneous Records of said county, and was also filed for record in the office of the County Clerk, Potter County, Texas, June 22, 1938, and recorded June 23, 1938, in Deed Records of said county in Volume 282 on page 106, and was also filed for record in the office of the County Clerk, Jim Wells County, Texas, December 16, 1938, and recorded December 29, 1938, in Deed Records of said county in Volume 64 on pages 348-355. Attached hereto, marked Exhibit B, and hereby referred to and made a part hereof is a full and true copy of said declaration of trust and reference is hereby made to said declaration of trust for all particulars thereof and of the trust therein provided for. Said trust and declaration thereof are and

have always been absolutely irrevocable and unchangeable by said George S. Gaylord and Gertrude H. Gaylord or by either of them or by any other person or party whomsoever, and there is not and has never been any power of revocation, change or modification of said trust or of any provision thereof reserved in any manner either in said declaration of trust or otherwise to said George S. Gaylord and Gertrude H. Gaylord or either of them or to any other person or party whomsoever. In connection with the creation of said trust and as a part of the same transaction the petitioner George S. Gaylord made and personally signed and executed under his oath a gift tax return for the calendar year 1935, on Form 709 Treasury [23] Department Internal Revenue Service, which said return was so verified by him under date of February 3, 1936, before Alice F. Jackson, a notary public in and for the County of Los Angeles, State of California, and filed in the office of the United States Collector of Internal Revenue at Los Angeles, California, on March 10, 1936. Said return included and covered the petitioner George S. Gaylord's contribution to said trust of the 5000 shares of the common capital stock of Marathon Paper Mills Company mentioned in said declaration of trust. In said return the petitioner declared that the gift represented by said contribution was made "By the creation of an irrevocable trust for the benefit of another" and there was at the same time filed in said office with said return and as a part thereof a copy of said declaration of trust. The petitioner upon so filing his said

return with said copy of said declaration of trust, with said Collector of Internal Revenue, and at the same time the return was so filed, paid a gift tax in the amount of \$2,531.27 on gifts referred to in said return and which included the petitioner's gift of said 5000 shares to said trust. Thereafter and under date of December 28, 1936, the petitioner paid to said Collector an additional gift tax of \$90.-05 assessed on said return. Attached hereto, marked Exhibit D, and hereby referred to and made a part hereof is a copy of said gift tax return. Similarly in connection with the creation of said trust and as a part of the same transaction said [24] Gertrude H. Gaylord made and personally signed and executed under her oath a gift tax return for the calendar year 1935 on Form 709 Treasury Department Internal Revenue Service, which said return was so verified by her under date of September 3, 1936, before Alice F. Jackson, a notary public in and for the County of Los Angeles, State of California, and filed in the office of said Collector on March 10, 1936. Said return included and covered said Gertrude H. Gaylord's contribution to said trust of 2000 shares of the common capital stock of Marathon Paper Mills Company mentioned in said declaration of trust. In said return said Gertrude H. Gaylord similarly declared that the gift represented by said contribution was made "By the creation of an irrevocable trust for the benefit of another", and there was at the same time filed in said office with said return and as a part thereof a copy of said declaration of trust. Attached hereto,

marked Exhibit E, and hereby referred to and made a part hereof is a copy of said gift tax return of said Gertrude H. Gaylord. The only trust to which said gift tax returns could or did refer was said trust so originally created by the hereinbefore mentioned declaration of trust. Long before any question, issue or controversy was raised by any tax authority respecting said trust the petitioner George S. Gaylord and said Gertrude H. Gaylord, his wife, upon advice of counsel and out of an abundance of caution, signed and executed a certain Declaration Being A Part Of A Certain [25] Declaration Of Trust Dated November 7, 1935, which was dated November 7, 1935, and was acknowledged and sworn to by said George S. Gaylord and Gertrude H. Gaylord under date of March 27, 1940, before J. C. Humphreys, a notary public in and for the County of Los Angeles in the State of California. Said Declaration Being A Part Of A Certain Declaration Of Trust Dated November 7, 1935, was recorded in the office of the County Recorder of Los Angeles County, California, on March 28, 1940, in Book 17245 at Page 350 of Official Records of said county. Attached hereto, marked Exhibit C, and hereby referred to and made a part hereof is a full and true copy of said Declaration Being A Part Of A Certain Declaration Of Trust Dated November 7, 1935. Said trust was created under and pursuant to a mutual understanding and agreement had between said George S. Gaylord and Gertrude H. Gaylord, his wife, prior to the execution of the

above mentioned declaration of trust dated the 7th day of November, 1935, in and by which understanding and agreement it was understood and agreed by and between said George S. Gaylord and Gertrude H. Gaylord that if said George S. Gaylord would contribute to an irrevocable trust to be created and provided for the uses and purposes and upon the terms and conditions set forth in said declaration of trust said 5000 shares of the capital stock of Marathon Paper Mills Company owned by him as his separate property, such shares to be a part of the trust estate to be provided for in said trust, said [26] Gertrude H. Gaylord would contribute to such trust as a part of such trust estate in trust for the same uses and purposes and upon the same terms and conditions the above mentioned 2000 shares of the common capital stock of Marathon Paper Mills Company owned by her as her separate property and that if she would make such contribution of said 2000 shares so owned by her said George S. Gaylord would make such contribution of said 5000 shares so owned by him and that said trust was to be absolutely and at all times and under all circumstances irrevocable by any person or party whomsoever or whatsoever. Under and pursuant to said mutual understanding and agreement between said George S. Gaylord and Gertrude H. Gaylord said declaration of trust was executed by them and he contributed to said trust said 5000 shares and she contributed to said trust said 2000 shares. There was a good and valuable consideration passing from her to him for his execution of

said declaration of trust and his contribution of said stock to said trust and his joining in said trust. There was likewise a good and valuable consideration passing from him to her for her execution of said declaration of trust and her contribution of her said stock to said trust and her joining in said trust. Said trust was not created without a valuable consideration passing to each of the trustors therein named. At the time said George S. Gaylord and Gertrude H. Gaylord executed said declaration of trust and at all times during the years 1936, 1937, 1938 [27] and 1939 they had no knowledge of any law which would make or render or purported to make or render said trust in any manner or at any time revocable or the income thereof or any part thereof taxable to the trustors or either of them. At the time of the execution in the year 1935 of said declaration of trust and prior thereto and at all times since said execution of said declaration of trust it has always been the unaltered and firm mutual desire, understanding, agreement, assumption and belief of said trustors and trustees George S. Gaylord and Gertrude H. Gaylord that said trust was and is absolutely irrevocable by them or by either of them or by any person or party whomsoever or whatsoever at any time or in any manner whatsoever. At all times since said execution in 1935 of said declaration of trust said George S. Gaylord and Gertrude H. Gaylord have acted on said agreement, understanding, assumption and belief that said trust was so absolutely irrevocable. No question has ever been raised nor can legiti-

mately be raised now as to the ever unchanged and firm intent at all times of said George S. Gaylord and Gertrude H. Gaylord to create pursuant to their mutual understanding and agreement an irrevocable trust on the terms, conditions and provisions set forth in said declaration of trust. The intent of said George S. Gaylord and Gertrude H. Gaylord that the trust created and provided for in said declaration of trust should forever be irrevocable preceded the creation of said trust, was present when said trust was [28] formed and has at all times remained the same and unchanged.

(b) None of the income of or from the trust hereinbefore mentioned and referred to, either for any of the years 1936, 1937, 1938 or 1939, or otherwise, is or ever has been income of the petitioner George S. Gaylord or said Gertrude H. Gaylord, his wife, in his or her individual or personal capacity, or income in which he or she has or ever had any beneficial right, title, interest or estate whatsoever. The whole of the net income of and from said trust in or for said years 1936, 1937, 1938 and 1939 was the property of and belonged to and was taxable to Margaret Gaylord Ruppel and Gertrude Gaylord Bruce, the first named beneficiaries in and under said trust, in equal shares. There is no law or lawful or valid regulation whatsoever under or pursuant to which any of the aforementioned income can be considered or treated as income of the petitioner George S. Gaylord and said Gertrude H. Gaylord, his wife, or either of them, in their respective per-

sonal or individual capacities, or under or pursuant to which they are or either of them is or they or either of them can be made liable or charged for or assessed with any income tax on any of said income. Under the law all of said income for income tax purposes belongs to and is chargeable to the two first named beneficiaries of said trust, the above named Margaret Gaylord Ruppel and Gertrude Gaylord Bruce, in equal shares, and not to the petitioner said George S. Gaylord and said Gertrude H. [29] Gaylord, his wife, or to either of them. There is no provision for any accumulation of any of the income of said trust but all of the income of said trust must be paid, distributed or applied to or for the beneficiaries of said trust, either monthly, quarterly or semi-annually, but in any event annually. Neither said George S. Gaylord nor his wife Gertrude H. Gaylord can at any time use or enjoy or be entitled to any of said income or participate therein.

(c) Said two first named beneficiaries of said trust, Margaret Gaylord Ruppel and Gertrude Gaylord Bruce (named in said declaration of trust as Gertrude Gaylord), are the daughters of the petitioner George S. Gaylord and said Gertrude H. Gaylord, his wife. Said Margaret Gaylord Ruppel was born on November 10, 1904, and said Gertrude Gaylord Bruce was born May 31, 1916. Each of said beneficiaries has lawful issue now living. Said Margaret Gaylord Ruppel has two children now living, to-wit, a daughter Barbara Brunker, who is over the age of sixteen (16) years, she having been

born October 14, 1925, and a son Robert Henry Brunker, who is over the age of thirteen (13) years, he having been born June 3, 1928. Said Gertrude Gaylord Bruce has one child living, to-wit, a daughter Ann Bruce, who is over the age of three (3) years, she having been born April 20, 1938. Said Margaret Gaylord Ruppel and Gertrude Gaylord Bruce now have and have had at all times since the inception of said trust in 1935 and each of them [30] now has and at all said times has had present existing and equal beneficial interests in said trust and the estate thereof and are the full owners of said trust, subject only in the event of non-survival to May 31, 1946 (when said Gertrude Gaylord Bruce will attain the age of thitry (30) years and the trust then in any case terminate) to being divested in favor of issue. Said Barbara Brunker, Robert Henry Brunker and Ann Bruce are such issue now living.

(d) Under said declaration of trust there is neither reserved to said George S. Gaylord nor has he ever had thereunder nor does he now have any beneficial right, title, interest or estate whatsoever in, to or with respect to any of the principal or corpus of the estate of said trust.

(e) Each of said beneficiaries of said trust Margaret Gaylord Ruppel and Gertrude Gaylord Bruce rendered and filed with said Collector of Internal Revenue, at Los Angeles, California, her individual income tax returns of her income for said years 1936, 1937, 1938 and 1939, respectively, in which returns she included all of her one-half of the

net income of said trust for the appropriate year, and paid her individual income taxes on said income.

(f) Said declaration of trust shows on its face that it was intended to be operative under laws of jurisdictions other than California. Upon information and belief the petitioner alleges that under the law of every jurisdiction in the United States outside of the State of California the trust set forth in said declaration of trust [31] in the form in which the same is set forth was at all times since the inception of said trust and is absolutely irrevocable. Said trust is also irrevocable under the laws of the State of California.

(g) During the year 1938 the trustees of said trust invested over \$94,000.00 of the principal or corpus of said trust in, and by way of purchase of, certain real property in the State of Texas for said trust and as a part of the estate thereof, which said real property ever since has been and is now owned and held by said George S. Gaylord and Gertrude H. Gaylord as trustees of said trust for the benefit of said trust and the beneficiaries thereof. In connection with such investments and purchases and the operations of said trustees on behalf of said trust in the State of Texas said declaration of trust was recorded in the year 1938 in the offices of the clerks of the county courts of Cameron, Hidalgo, Potter and Jim Wells Counties, Texas, respectively, as hereinbefore set forth. Included in the net income of and from said trust for the years 1938 and 1939 referred to in said notice of deficiency were

and are the following net rents from said real property in said State of Texas, to-wit: In and for said year 1938 \$3,859.95 and in and for said year 1939 \$6,370.67. Upon information and belief the petitioner alleges that under the law of Texas said trust always was and is irrevocable and all of said income was and is wholly the property of said beneficiaries Margaret Gaylord Ruppel and Gertrude [32] Gaylord Bruce, in equal shares, and that neither the petitioner nor his wife Gertrude Gaylord is entitled to have or enjoy any of said income.

(h) All of the 7000 shares of the capital stock of Marathon Paper Mills Company, a Wisconsin corporation, mentioned in said declaration of trust were sold and delivered by said trustees in Chicago, Illinois, and/or in the State of New York. Upon information and belief the petitioner alleges that said trust always was and is irrevocable in the States of Illinois and New York.

(i) All of the cash funds of said trust in the years 1936, 1937 and 1938 were kept on deposit in the names of said George S. Gaylord and Gertrude H. Gaylord, as trustees under Declaration of Trust dated November 7, 1935, with Harris Trust and Savings Bank in Chicago, Illinois, and in the years 1939, 1940 and 1941 all of the bank accounts of said trustees, as trustees of said trust, were kept with said Harris Trust and Savings Bank in Chicago, Illinois, and with Bankers Trust Company, of 16 Wall Street in the City of New York, in the State of New York.

(j) Said 7000 shares of the capital stock of Marathon Paper Mills Company were acquired with some bonds in a non-taxable exchange October 31, 1927, in which exchange the petitioner George S. Gaylord exchanged 3357 shares of the stock of Menasha Printing and Carton Company (a corporation merged or consolidated with Marathon Paper Mills [33] Company (a corporation merged or consolidated with Marathon Paper Mills Company October 31, 1927) for 6728 shares of common stock and \$1,038,000.00 (face value) in bonds of Marathon Paper Mills Company. In determining the basis for said 3357 shares of Menasha Printing and Carton Company stock used as the basis for the stock and bonds so acquired in Marathon Paper Mills Company the Commissioner erred by disregarding two important transactions, hereinafter mentioned, affecting the basis of this stock. Commencing in 1928 the petitioner George S. Gaylord sold some of such bonds so acquired, using a basis of \$251.99 for each bond in reporting such sales transactions in his subsequent returns of income for each of the years in which such sales were made, that is, 1928, 1929, 1930, 1931, 1932, 1933, 1934 and 1935. This basis was accepted by the Internal Revenue Service upon the examination of the petitioner's income tax return of his income for the year 1928, in which year the first sales of such bonds were made by him, and said basis was used thereafter by him in all the aforementioned subsequent returns in reporting sales of such bonds. The basis for the stock so acquired with such bonds was also determined and

shown in the computation of the basis for such bonds and has been used by the petitioner in all income tax returns reporting sales of that stock, that is, in all income tax returns of income for the years 1935 to 1939, inclusive, the last of such stock having been sold in the last men- [34] tioned year, that is, in 1939. Attached hereto, marked Exhibit F, and hereby referred to and made a part hereof is a copy (substantially) of the schedule which was attached to all of said income tax returns and used in connection therewith and referred to therein in which the aforesaid bases were set forth. These bases so used by the petitioner in all income tax returns made by him and also the bases determined by the Internal Revenue Service for the Marathon Paper Mills Company stock are in error, principally for the reason that two important taxable exchanges were not considered by either the petitioner or the Internal Revenue Service in arriving at the bases of value of such stocks and bonds, the petitioner having failed to consider said two exchanges through inadvertence. These two exchanges are as follows:

(1) On or about July 1, 1917, in the merger or consolidation of Menasha Carton Company and Menasha Printing Company to form Menasha Printing and Carton Company, the petitioner George S. Gaylord surrendered 337 shares of stock owned by him in Menasha Carton Company and gave his note for \$152,161.11 for 435 shares of the common stock and 190 shares of the preferred stock of the new corporation, Menasha Printing and Carton Com-

pany. Upon completion of this consolidation or merger he did not own an interest in the new company proportionate to his interest in the merged or consolidated company prior to such merger or consolidation. The basis upon which the exchange of stock in the old [35] corporations for stock in the new corporation was made was upon the actual value of the assets of each of the old companies at the time of the merger or consolidation. The par or stated value of the stock in the new corporation was based substantially upon the par or stated value of the stock of the old companies plus the accumulated earnings to the date of the consolidation or merger.

(2) On or about August 24, 1927, the petitioner George S. Gaylord acquired 352 shares of Menasha Printing and Carton Company from his brother C. W. Gaylord in exchange for 432 shares of stock of Robert Gaylord, Inc. The petitioner previously had given to his brother C. W. Gaylord on or about October 5, 1925, 350 shares of stock of Menasha Printing and Carton Company in exchange for the same 432 shares of stock in Robert Gaylord, Inc., so returned to C. W. Gaylord on or about August 24, 1927. These exchanges were taxable, although through inadvertence not considered so by the petitioner at the times involved, and the basis for the 352 shares of stock acquired by him affects the basis of the Marathon Paper Mills Company stock and its value is determined by the value placed on stock of Menasha Printing and Carton Company, a party to the tax-free organization completed in October,

1927. This value is determined as follows: The petitioner George S. Gaylord received for 3357 shares of Menasha Printing and Carton Company stock, which included the 352 shares received on or about August 24, 1927, from his brother, the following securities: [36]

1038 5½% bonds	\$ 1,038,000.00
6728 shares common stock valued at	
130.30 per share	876,658.40
	<hr/>
	\$ 1,914,658.40

337/3357 of this value \$1,914,658.40 is \$200,762.51, the value of these 352 shares of stock.

Attached hereto, marked Exhibit G, and hereby referred to and made a part hereof is a copy (substantially) of a memorandum which was submitted to the Internal Revenue Service showing the basis of the stock acquired by the petitioner in Menasha Printing and Carton Company, based on the earnings in 1917 of the Menasha Carton Company. Attached hereto, marked Exhibit H, and hereby referred to and made a part hereof, is a schedule showing the computation of the basis of Marathon Paper Mills stock based upon the data set forth in the hereinbefore referred to Exhibit F and Exhibit G.

(k) For the purpose of computing the capital gain realized in the years 1936, 1937, 1938 and 1939 from the sale of shares of the common capital stock of Marathon Paper Mills Company belonging to said trust the statutory basis for computing gain or loss on each such sale was and is \$8.21 per share as

stated in the income tax returns filed for said year as not \$2.83542 per share or any sum or amount less than \$8.21 per share.

(1) In March, 1938, the petitioner George S. Gaylord, in his individual and personal capacity, and his said wife Gertrude H. Gaylord, in her individual and per- [37] sonal capacity, and the hereinbefore mentioned trust by its trustees George S. Gaylord and Gertrude H. Gaylord purchased each an undivided one-third interest in business property situate in Santa Monica, California, consisting of land improved at the time of said purchase with a storerooms building then occupied by three different tenants in several tenancies. In the latter part of 1938 one of these tenants, requiring additional space, requested the owners to build an addition to the building and to do such remodeling as was necessary to meet his requirements. A contractor was engaged to give an estimate on the cost of such work and it was found that considerable expenditure would have to be made to remodel the old building and the contractor suggested demolishing the old building and erecting a new building and gave said owners his estimates for this work. The latter then consulted brokers through whom the property was purchased and were informed as to the rental value of the proposed improvement and as to the prospect of obtaining new tenants if the then tenants could not be retained. It was at this time, in 1938, that the petitioner and his co-owners decided to demolish the building. At the time the premises above mentioned were acquired by the

petitioner and his co-owners they had no intention of demolishing the building then on said land.

(m) The petitioner George S. Gaylord acquired a ranch near Carmel, California, part of which was then devoted to a pear orchard containing approximately 432 trees. After [38] several years of operation prices received for the fruit declined to such an extent that this operation was no longer profitable and in 1939 he removed the trees to use the land for other purposes. The loss claimed by him was estimated at \$10.00 per tree, which was and is the actual loss sustained by him and which loss is substantiated by the fact that similar lands in the vicinity with pear trees have been sold within a comparable time of such removal for \$1,500.00 per acre with an average of 75 trees to the acre, while similar lands in such vicinity without such trees sold for \$750.00 per acre.

Wherefore, the petitioner prays that this Board may hear this proceeding and redetermine the deficiency set forth by the Commissioner of Internal Revenue hereinbefore referred to and determine that there is no such deficiency of \$49,518.76 and that there is no deficiency in any sum or amount whatsoever in or with respect to the petitioner's income tax liability for the taxable years 1936 to

1939, inclusive, or any of said years, and for such other relief as may be proper in the premises.

GEORGE S. GAYLORD

Post Office Address: 639 Rosemont Avenue, Pasadena, California.

THOMAS A. J. DOCKWEILER

whose post office address is 1035 I. N. Van Nuys Building, 210 West Seventh Street, Los Angeles, California. [39]

JAMES W. BONTEMS

whose post office address is 215 West Sixth Street, Los Angeles, California.

Attorneys for said petitioner.

State of California,

County of Los Angeles—ss.

George S. Gaylord, being duly sworn, says that he is the petitioner above named; that he has read the foregoing petition and is familiar with the statements contained therein, and that the statements contained therein are true, except those stated to be upon information and belief, and that he believes those to be true.

GEORGE S. GAYLORD

Subscribed and sworn to before me this 5th day of November, 1941.

(Notarial Seal) J. F. KINMAN

Notary Public in and for said County of Los Angeles, State of California.

My commission expires August 14, 1942. [40]

EXHIBIT A

Form 1230

SN-IT-1

Treasury Department
Internal Revenue Service
12th Floor

U. S. Post Office and Court House,
Los Angeles, California

Sep 17, 1941

Office of
Internal Revenue Agent in Charge
Los Angeles Division
LA: IT:90D: PB

Mr. George S. Gaylord,
639 Rosemont Avenue,
Pasadena, California.

Sir:

You are advised that the determination of your income tax liability for the taxable year(s) 1936 to 1939, inclusive, discloses a deficiency of \$49,-518.76 as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency mentioned.

Within 90 days (not counting Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with the United States Board of Tax Appeals for a redetermination of the deficiency.

Should you not desire to file a petition, you are [41] requested to execute the enclosed form and for-

Exhibit A—(Continued)

ward it to the Internal Revenue Agent in Charge, Los Angeles, California, for the attention of LA: Conf. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Respectfully,

GUY T. HELVERING,

Commissioner,

By GEORGE D. MARTIN

Internal Revenue Agent in
Charge.

Enclosures:

Statement.

Form of waiver. [42]

Statement

LA:IT:90D:PB

Mr. George S. Gaylord,
639 Rosemont Avenue,
Pasadena, California.

Tax Liability for the Taxable Years Ended

December 31, 1936,

December 31, 1937,

December 31, 1938

and

December 31, 1939

Exhibit A—(Continued)

Income Tax

Year	Liability	Assessed	Deficiency
1936	\$27,486.36	\$ 9,650.54	\$17,835.82
1937	21,690.34	9,656.84	12,033.50
1938	17,188.72	6,746.10	10,442.62
1939	15,533.84	6,327.02	9,206.82
Totals	\$81,899.26	\$32,380.50	\$49,518.76

In making this determination of your income tax liability, careful consideration has been given to the report of examination dated December 21, 1940, to your protests dated January 27 and April 21, 1941, and to the statements made at the conferences held on March 31, May 1 and July 18, 1941.

The net income as adjusted for the taxable years 1936, 1937, 1938 and 1939 of the trust created by declaration of trust executed November 7, 1935 by yourself and wife, Gertrude H. Gaylord, of which you and your wife are named as the Trustees and your two daughters, Margaret Gaylord Ruppel and [43] Gertrude Gaylord are named as beneficiaries, is held to constitute income to you and your wife as grantors under the provisions of sections 22(a), 166 and 167 of the Revenue Acts of 1936 and 1938 and of the Internal Revenue Code. Inasmuch as five-sevenths of the total value of the property transferred to the trust was contributed by you, that proportion of the net income of the trust as adjusted for each of the years 1936 to 1939, inclusive, has been included in the recomputation of your taxable net income for those years.

Exhibit A—(Continued)

For the purpose of computing the capital gains realized by you and the Gaylord Trust in the years 1936, 1937, 1938 and 1939 from the sale of shares of the common capital stock of Marathon Paper Mills Company, the statutory basis for computing gain or loss on each such sale has been determined to be \$2.83542 per share, instead of \$8.21 per share as stated in the income tax returns filed. For the purpose of that determination the fair market value of the 435 shares of common stock of Menasha Printing and Carton Company received by you on or about August 15, 1917 in exchange for stock of Menasha Carton Company is held to be \$100.00 per share. It is held further that your statutory basis for gain or loss upon the sale or other disposition of the bonds and stock of Marathon Paper Mills Company received by you on or about October 31, 1927 in exchange for 3357 shares of the common stock of Menasha [44] Printing and Carton Company is the same as your basis in the shares given in that exchange and that such basis should be apportioned 53.967% to the bonds and 46.033% to the stock received in that exchange.

A copy of this letter and statement has been mailed to your representative, Mr. James W. Bon-tems, 215 West 6th Street, Los Angeles, California, in accordance with the authority contained in the power of attorney executed by you and on file with the Bureau.

Exhibit A—(Continued)
ADJUSTMENTS TO NET INCOME

Taxable Year Ended December 31, 1936

Net income as disclosed by return	\$52,779.14
Additional income:	
(a) Income from trust	\$31,290.73
(b) Capital gain	7,981.25 39,271.98
Total.....	\$92,051.12
Additional deduction:	
(c) Depreciation	245.00
Net income adjusted	\$91,806.12

EXPLANATION OF ADJUSTMENTS

(a) The portion of the income of the Gaylord Trust held to be taxable to you, as stated above, has been determined to be \$31,290.73, as follows:

Net income reported in trust return, form 1041.....	\$37,057.53
Addition to income:	
Increase in capital gain	6,749.50
Net income of trust as adjusted.....	\$43,807.03
Your portion, 5/7	\$31,290.73

[45]

The increase in capital gain in the amount of \$6,749.50 is due to the above noted decrease in basis of Marathon Paper Mills Company common stock from \$8.21 per share to \$2.83542 per share, resulting in a difference in realized gain, when applied to the 4,000 shares of the mentioned stock sold by the trust, of \$21,498.32, of which 30%, or \$6,449.50, is taken into account under the provisions of section 117(a) of the Revenue Act of 1936; the increase is due further to the correction of a mathe-

Exhibit A—(Continued)

matical error of \$300.00 made in the trust return in applying the 30% limitation to realized gain.

(b) This increase in the amount of capital gain reported in your return is due to the above noted decrease in basis of Marathon Paper Mills Company common stock from \$8.21 per share to \$2.83542 per share, resulting in a difference in realized gain, when applied to the 4,950 shares of the mentioned stock sold by you, of \$26,604.17, of which 30%, or \$7,981.25, is taken into account under the provisions of section 117(a) of the Revenue Act of 1936.

(c) The amount of depreciation allowable on mushroom sheds is determined to be \$875.00, representing depreciation at the rate of 8-1/3% per annum on \$10,500.00. Since you claimed depreciation on this property in the amount of \$630.00, an additional deduction of \$245.00 is allowed. [46]

COMPUTATION OF TAX

Taxable Year Ended December 31, 1936

Net income adjusted	\$91,806.12
Less: Personal exemption	\$ 2,500.00
Credit for dependent	400.00 2,900.00
Balance (surtax net income).....	\$88,906.12
Less: Earned income credit	300.00
Net income subject to normal tax.....	\$88,606.12
Normal tax at 4% on \$88,606.12.....	\$ 3,544.24
Surtax on \$88,906.12.....	23,942.12
Correct income tax liability.....	\$27,486.36
Income tax assessed:	
Original, account No. 200178.....	9,650.54
Deficiency of income tax	\$17,835.82

Exhibit A—(Continued)
ADJUSTMENTS TO NET INCOME

Taxable Year Ended December 31, 1937

Net income as disclosed by return.....	\$52,799.47
Additional income and unallowable deduction:	
(a) Income from trust	\$23,623.27
(b) Capital gain	4,514.65
(c) Financial expense disallowed.....	467.10
	28,605.02
	<hr/>
Total.....	\$81,404.49
Additional deduction:	
(d) Depreciation	245.00
	<hr/>
Net income adjusted	\$81,159.49
	[47]

Explanation of Adjustments

(a) The portion of the income of the Gaylord Trust held to be taxable to you, as stated above, has been determined to be \$23,623.27, as follows:

Net income reported in trust	
return, form 1041	\$30,495.78
Addition to income:	
Increase in capital gain	2,576.80
	<hr/>
Net income of trust as adjusted.....	\$33,072.58
Your portion, 5/7	\$23,623.27

The increase in capital gain in the amount of \$2,576.80 is due to the above noted decrease in basis of Marathon Paper Mills Company common stock from \$8.21 per share to \$2.83542 per share, resulting in a difference in realized gain, when applied to the 1,600 shares of the mentioned stock sold by the trust, of \$8,599.33, of which 30%, or \$2,579.80, is taken into account under the provisions of section 117(a) of the Revenue Act of 1936, and due

Exhibit A—(Continued)

further to the correction of a mathematical error of \$3.00 made in the trust return.

(b) This increase in the amount of capital gain reported in your return is due to the above noted decrease in basis of Marathon Paper Mills Company common stock from \$8.21 per share to \$2.83542 per share, resulting in a difference in realized gain, when applied to the 2,800 shares of the mentioned stock sold by you, of \$15,048.82, of which 30%, or \$4,514.65, is taken into account under the provisions of section 117(a) of the Revenue Act of 1936. [48]

(c) The deduction of \$517.10 claimed in your return for "paid Dockweiled & Dockweiler attorneys for advise financial matters" is allowed to the extent of \$50.00 pertaining to rental property, and is disallowed as to \$467.10. The latter amount is held not to be an expense incurred in carrying on a trade or business within the meaning of section 23(a) of the Revenue Act of 1936, and such amount is not an allowable deduction.

(d) An additional deduction for depreciation is allowed in the amount of \$245.00, as explained under adjustment (c) for the preceding taxable year.

Exhibit A—(Continued)

COMPUTATION OF TAX

Taxable Year Ended December 31, 1937

Net income adjusted	\$81,159.49
Less: Personal exemption	\$ 2,500.00
Credit for dependent	400.00 2,900.00
Balance (surtax net income).....	\$78,259.49
Less: Earned income credit	300.00
Net income subject to normal tax.....	\$77,959.49
Normal tax at 4% on \$77,959.49.....	\$ 3,118.38
Surtax on \$78,259.49.....	18,581.96
Total tax	\$21,700.34
Less: Income tax paid at the source.....	10.00
Correct income tax liability	\$21,690.34
Income tax assessed:	
Original, account No. 809480.....	9,656.84
Deficiency of income tax	\$12,033.50

[49]

ADJUSTMENTS TO NET INCOME

Taxable Year Ended December 31, 1938

Net income as disclosed by return	\$42,636.10
Additional income and unallowable deductions:	
(a) Income from trust	\$18,074.66
(b) Long-term capital gain	8,868.06
(c) Depreciation disallowed	491.82
(d) Loss disallowed	5,076.11 32,510.65
Net income adjusted	\$75,146.75

Explanation of Adjustments

(a) The portion of the income of the Gaylord Trust held to be taxable to you, as stated above, has been determined to be \$18,074.66, as follows:

Exhibit A—(Continued)

Net income reported in trust return, form 1041.....\$ 0.00

Additions to income:

- | | | |
|---|-------------|-----------|
| 1. Deduction for amount distributable to beneficiaries disallowed | \$15,899.86 | |
| 2. Increase in long-term capital gain.... | 2,687.29 | |
| 3. Adjustment of net income from rents | 1,641.27 | |
| 4. Loss disallowed | 5,076.11 | 25,304.53 |

Net income of trust as adjusted.....\$25,304.53

Your portion, 5/7\$18,074.66

[50]

1. For the purpose of determining the amount of income derived by the trust the deduction claimed for the amount distributable to beneficiaries is disallowed.

2. The increase in long-term capital gain in the amount of \$2,687.29 is due to the above noted decrease in basis of Marathon Paper Mills Company common stock from \$8.21 per share to \$2.83542 per share, resulting in a difference in realized gain, when applied to the 1,000 shares of the mentioned stock sold by the trust, of \$5,374.58, of which 50%, or \$2,687.29, is taken into account, under the provisions of section 117(b) of the Revenue Act of 1938.

3. This adjustment results from the determination of rental net income in the amount of \$6,282.91, whereas the amount reported in the trust return is \$4,641.64, a difference of \$1,641.27. The amount of \$6,282.91 has been determined as follows:

Exhibit A—(Continued)

Property	Rent Received	Depreciation	Other Expense	Net Profit
Alhambra	\$ 697.41	\$ 64.90	\$ 35.10	\$ 597.41
Amarillo	965.01	88.89	64.75	811.37
McAllen	1,893.54	181.82	127.26	1,584.46
Santa Monica	1,856.58	....	31.03	1,825.55
Harlingen	1,764.12	300.00	....	1,464.12
Total	\$7,176.66	\$635.61	\$258.14	\$6,282.91

4. The amount of \$5,076.11 deducted in the return filed by the trust as representing its proportionate share of loss sustained in the year 1938 by reason of the voluntary demoli- [51] tion of a building in Santa Monica, California, is disallowed. It appears that the building in question was situated on land acquired in March, 1938 one-third each in the names of George S. Gaylord, Gertrude H. Gaylord and the Gaylord Trust and that it was razed early in January 1939 to make way for the erection of a new building. It is held that no deductible loss was sustained by reason of the demolition of the building in question. See Article 23(e)-2 of Regulations 101.

(b) This increase in the amount of long-term capital gain reported in your return is due to the above noted decrease in basis of Marathon Paper Mills Company common stock from \$8.21 per share to \$2.83542 per share, resulting in a difference in realized gain, when applied to the 3,300 shares of the mentioned stock sold by you, of \$17,736.11, of which 50%, or \$8,868.06, is taken into account under the provisions of section 117(b) of the Revenue Act of 1938.

Exhibit A—(Continued)

(c) This disallowance of depreciation is due to the following adjustments:

Property	Depreciation		
	Claimed	Allowed	Disallowed
1. Stucco and steel— Alhambra	\$ 155.50	\$ 129.79	\$ 25.71
2. Brick—Amarillo	200.00	88.89	111.11
3. Mushroom sheds	1,230.00	875.00	355.00
Totals	\$1,585.50	\$1,093.68	\$491.82

1. This property was acquired during the taxable year at a cost subject to depreciation of \$15,575.36, having an [52] estimated remaining life of 30 years. Depreciation is allowable for 3 months of this taxable year.

2. This property was acquired during the taxable year at a cost subject to depreciation of \$3,200.00, having an estimated remaining life of 18 years. Depreciation is allowable for 6 months of this taxable year.

3. The determination of the amount allowable is explained under adjustment (c) for the year 1936.

(d) The amount of \$5,076.11 deducted in your return as representing your proportionate share of loss sustained in the year 1938 by reason of the voluntary demolition of a building in Santa Monica, California, is disallowed for the reason stated under item 4 of adjustment (a) for this year.

Exhibit A—(Continued)

COMPUTATION OF TAX

Taxable Year Ended December 31, 1938

Tax Under Sections 11 and 12, Revenue Act of 1938

Net income adjusted	\$75,146.75
Less: Personal exemption	2,500.00
Balance (surtax net income)	\$72,646.75
Less: Earned income credit	300.00
Net income subject to normal tax.....	\$72,346.75
Normal tax at 4% on \$72,346.75.....	\$ 2,893.87
Surtax on \$72,646.75.....	15,998.10
Total tax under sections 11 and 12.....	\$18,891.97

[53]

Alternative Tax, Section 117(c)(1), Revenue
Act of 1938

Net income adjusted	\$75,146.75
Less: Net long-term capital gain	45,599.54
Ordinary net income	\$29,547.21
Less: Personal exemption	2,500.00
Balance (surtax net income).....	\$27,047.21
Less: Earned income credit	300.00
Net income subject to normal tax.....	\$26,747.21
Normal tax at 4% on \$26,747.21.....	\$ 1,069.89
Surtax on \$27,047.21.....	2,438.97
Partial tax	\$ 3,508.86
Plus: 30% of net long-term capital gain..	13,679.86
Alternative tax	\$17,188.72
Correct income tax liability (alternative tax).....	\$17,188.72
Income tax assessed:	
Original, account No. 805280	6,746.10
Deficiency of income tax	\$10,442.62

Exhibit A—(Continued)

ADJUSTMENTS TO NET INCOME

Taxable Year Ended December 31, 1939

Net income as disclosed by return.....	\$41,139.37
Additional income and unallowable deductions:	
(a) Income from trust	\$18,002.94
(b) Long-term capital gain	5,907.89
(c) Depreciation disallowed	1,016.69
(d) Farm loss disallowed	3,456.00
(e) Storm loss disallowed	1,400.00
	<hr/> 29,783.52
Net income adjusted	\$70,922.89

[54]

Explanation of Adjustments

(a) The portion of the income of the Gaylord Trust held to be taxable to you, as stated above, has been determined to be \$18,002.94, as follows:

Net income reported in trust return, form 1041.....	\$	0.00
Additions to income:		
1. Deduction for amount distributable to beneficiaries	\$22,465.39	
2. Increase in long-term capital gain....	1,074.92	
3. Depreciation disallowed	1,663.81	25,204.12
	<hr/>	<hr/>
Net income of trust as adjusted.....	\$25,204.12	
Your portion, 5/7	\$18,002.94	

1. For the purpose of determining the amount of income derived by the trust the deduction claimed for amount distributable to beneficiaries is disallowed.

2. The increase in long-term capital gain in the amount of \$1,074.92 is due to the above noted decrease in the basis of Marathon Paper Mills Company common stock from \$8.21 per share to

Exhibit A—(Continued)

\$2.83542 per share, resulting in a difference in realized gain, when applied to the 400 shares of the mentioned stock sold by the trust, of \$2,149.83, of which 50%, or \$1,074.92, is taken into account under the provisions of section 117(b) of the Internal Revenue Code. [55]

3. This adjustment results from the determination of allowable depreciation in the amount of \$2,001.29, whereas the amount claimed in the trust return is \$3,665.10, a difference of \$1,663.81. The amount of \$2,001.29 has been determined as follows:

Property	Date Acquired	Cost	Est. Rem. Life	Allowable Depreciation
Alhambra	1938	\$ 7,787.69	30	\$ 259.59
Amarillo	1938	3,200.00	18	177.77
Alice	1938	21,000.00	40	525.00
Harlingen	1937	12,000.00	40	300.00
McAllen	1938	8,000.00	22	363.64
Santa Monica	1939	11,258.60	30	375.29
Total.....				\$2,001.29

(b) This increase in the amount of long-term capital gain reported in your return is due to the above noted decrease in basis of Marathon Paper Mills Company common stock from \$8.21 per share to \$2.83542 per share with respect to 2,362 shares of the mentioned stock sold by you, and to an increase in basis from \$8.21 per share to \$17.00 per share with respect to 100 shares of the mentioned stock sold by you. These adjustments result respectively in an increase in realized gain of \$12,694.77 and a decrease in realized gain of \$879.00, or a net in-

Exhibit A—(Continued)

crease of \$11,815.77, of which 50%, or \$5,907.89, is taken into account under the provisions of section 117(b) of the Internal Revenue Code. [56]

(c) This disallowance of depreciation is due to the following adjustments:

Property	Depreciation		
	Claimed	Allowed	Disallowed
1. Stucco and steel—			
Alhambra	\$ 771.00	\$ 519.18	\$ 251.82
2. Brick—Amarillo	400.00	177.77	222.23
3. Mushroom sheds	1,230.00	875.00	355.00
4. Stucco and steel—			
Santa Monica	562.93	375.29	187.64
Totals.....	\$2,963.93	\$1,947.24	\$1,016.69

1 and 2. The basis of the determination of the amount allowable is explained under adjustment (b) for the preceding year.

3. The determination of the amount allowable is explained under adjustment (c) for the year 1936.

4. This property was acquired during the taxable year at a cost subject to depreciation of \$11,258.60, having an estimated remaining life of 30 years.

(d) In your return you reported a loss of \$7,366.47 as resulting from the operation of a farm. In the Schedule of Farm Income and Expenses, Form 1040F, filed with the return, a deduction of \$4,320.00 was taken for a loss claimed to have been sustained in the taxable year by reason of 432

Exhibit A—(Continued)

pear trees valued at \$10.00 each having been voluntarily pulled in 1939 to make room for more profitable crops and livestock. The loss so claimed is allowed in the amount [57] of \$864.00 under the provisions of section 23(e) of the Internal Revenue Code and Article 19.23(e)-3 of Regulations 103, and the balance thereof is disallowed as not representing a deductible loss.

(e) In your return you took a deduction of \$2,650.00 as representing your one-half of a loss of \$5,300.00 claimed to have resulted from the destruction by storm of ornamental trees on the personal residence property owned by you and Gertrude H. Gaylord, your wife. It is held that the total amount of the loss so sustained did not exceed \$2,500.00 and one-half of that amount or \$1,250.00 is allowed in lieu of the amount of \$2,650.00 deducted in the return.

COMPUTATION OF TAX

Taxable Year Ended December 31, 1939

Tax Under Sections 11 and 12, I.R.C.

Net income adjusted	\$70,922.89
Less: Personal exemption	2,500.00
<hr/>	
Balance (surtax net income)	\$68,422.89
Less: Earned income credit	300.00
<hr/>	
Net income subject to normal tax.....	\$68,122.89
Normal tax at 4% on \$68,122.89.....	\$ 2,724.92
Surtax on \$68,422.89.....	14,181.84
<hr/>	
Total tax under sections 11 and 12.....	\$16,906.76

Exhibit A—(Continued)

Alternative Tax, Section 117(c)(1), I.R.C.

Net income adjusted	\$70,922.89
Less: Net long-term capital gain	35,602.44
Ordinary income	\$35,320.45
Less: Personal exemption	2,500.00
Balance (surtax net income)	\$32,820.45
Less: Earned income credit	300.00
Net income subject to normal tax	\$32,520.45
Normal tax at 4% on \$32,520.45	\$ 1,300.82
Surtax on \$32,820.45	3,552.29
Partial tax	\$ 4,853.11
Plus: 30% of net long-term capital gain	10,680.73
Alternative tax	\$15,533.84
Correct income tax liability (alternative tax)	15,533.84
Income tax assessed:	
Original, account No. 852592	6,327.02
Deficiency of income tax	\$ 9,206.82

[59]

EXHIBIT B

DECLARATION OF TRUST

Know All Men By These Presents:

That the undersigned, George S. Gaylord and Gertrude H. Gaylord, his wife, of the City of Pasadena, in the County of Los Angeles, State of California (who, though more than one, are also hereinafter called "trustee"), do hereby certify and declare that they hold and shall and will hold the fol-

Exhibit B—(Continued)

lowing described personal property, to-wit: seven thousand (7,000) shares of the common capital stock of Marathon Paper Mills Company, a Wisconsin corporation, of the par value of Twenty-Five Dollars (\$25.00) per share, and any and all proceeds thereof, In Trust, Nevertheless, for the following uses and purposes and upon the following terms and conditions, to-wit:

Article I.

The trustee shall, during the existence of this trust, in all respects as said George S. Gaylord (who was the former owner of five thousand (5,000) of said shares) or said Gertrude H. Gaylord (who was the former owner of two thousand (2,000) of said shares) could if he or she had absolute and unlimited ownership, possession, management, control and disposition of said shares and any and all proceeds thereof, take charge of and possess, manage and control all of said shares and all principal proceeds thereof and any and all investments and reinvest- [60] ments thereof and any and all property substituted for any of said stock, proceeds, investments and/or reinvestments (all of which said stock, the principal proceeds thereof, investments and reinvestments and property are hereinafter referred to as the "trust estate") and receive and collect the rents, issues, profits, interest, dividends and income of the trust estate. The trustee shall loan, reloan, invest, reinvest, and keep invested each and every part of the trust estate in such manner as the

Exhibit B—(Continued)

trustee may deem advisable, and for and/or in connection with any and/or all of the aforesaid purposes and/or any purpose of this trust shall sell, exchange, rent, lease, mortgage, pledge, hypothecate, convey, transfer, assign and dispose of the trust estate, real, personal and/or mixed, or any part thereof or any interest therein, at any time and from time to time and upon such terms and for such prices or considerations as the trustee may deem advisable. Without in any manner limiting any power or authority of the trustee as set forth in this instrument, the authority and power of the trustee hereinbefore set forth in this Article I shall include and be deemed to include the following authorizations, powers and rights in the trustee, to be exercised in the sole judgment and discretion of the trustee, to-wit: To hold, maintain, operate and/or continue, at the risk of the trust estate and as long as the trustee may deem advisable, any and all property and/or business which the trustee may receive [61] hereunder, whether or not the same are or is permissible by law as investment for trust funds, or the trustee may sell, exchange or dispose of the same. To partition, divide and/or subdivide. To rent and/or lease for a term of ninety-nine (99) years or for any lesser term or for any term which shall or may last or extend for any term beyond or after the termination of this trust, and to such lessee or lessees and for such rents and upon such covenants, agreements, provisions, conditions and stipulations as the trustee may determine. To im-

Exhibit B—(Continued)

prove the property of the trust estate and/or repair and/or keep in good order any and all improvements on the property of the trust estate, and to remove, substitute, alter and/or repair any improvement on any such property and/or add any improvement thereto. To borrow from time to time such sum or sums of money as the trustee may deem best to meet any cost or expense of the administration or execution of this trust if the trustee has not sufficient funds available of the trust estate to meet any such cost and/or expense. To fix the rate of interest and other terms of any such loan and to pay such interest on any such loan and to secure any such loan by mortgage, deed of trust, pledge or other lien upon or transfer of real, personal and/or mixed property of the trust estate or any part thereof. To loan the trustee's own funds to this trust at prevailing rates of interest, if such loan be necessary to meet any cost and/or expense of the administration and/or execution of this [62] trust and the trustee has not sufficient funds available of the trust estate therefor, any such loan with such interest thereon to be a first lien on the whole of the trust estate and the gross income therefrom and to be first repaid out of the gross income and/or principal of the trust estate. To in such manner and upon such terms as to the trustee shall seem best make all compromises and/or settlements which the trustee may deem necessary or proper as to any claim, question, matter or thing which may arise during or in the execution of this trust. To have

Exhibit B—(Continued)

respecting bonds, shares of corporate stock and other securities, whether similar or dissimilar, all the rights, powers and privileges of an owner, including, though without limiting the foregoing, holding securities in the trustee's own name or otherwise, voting, giving proxies, payment of calls, assessments and other sums deemed by the trustee expedient for the protection of the interests of the trust estate, exchanging securities, selling or exercising stock subscription or conversion rights, participating in foreclosures, reorganizations, consolidations, mergers, liquidations, pooling agreements and voting trusts, and assenting to corporate sales, leases and encumbrances; the trustee, however, to assume to be under no personal liability in respect of any such bonds, shares and/or other securities at any time held hereunder. To reimburse the trustee from the income and/or principal of the trust estate for any such liability or expense incurred by the [63] trustee by reason of the trustee's ownership and/or holding of any property received and/or held in this trust. All discretions in this trust conferred upon the trustee shall, unless specifically limited, be absolute and uncontrolled and their exercise conclusive on all persons interested in this trust or the trust estate. The powers and discretions of the trustee enumerated herein are not to be construed as a limitation upon the trustee's general powers and discretions but the trustee in addition thereto is vested with and shall have, for the

Exhibit B—(Continued)

full duration of this trust, as to the trust estate, the income therefrom, and in the execution of this trust, the same and all the powers and discretions that an absolute owner of property has or may have.

ARTICLE II.

The whole title, legal and equitable, in fee, to the trust estate, is and shall be vested in the trustee as such title in the trustee is necessary for the trustee's due execution of this trust. The beneficiaries hereunder take no estate or interest therein and their interests hereunder are personal property only consisting of the right to enforce the due performance of this trust.

ARTICLE III.

From the gross income of the trust estate and/or, if it be necessary, from the trust estate, the trustee shall first pay and discharge when due and payable any and all taxes, assessments and other charges imposed by [64] public authority on the trust estate or any part thereof, and may also first pay and discharge when due and payable any and all reasonable costs, expenses, charges and liabilities necessarily expended or incurred by the trustee in connection with the collection, care, administration, management or distribution of the trust estate and/or any part thereof and/or any income therefrom and/or the protection of the trust estate and/or any part thereof and/or this trust and/or

Exhibit B—(Continued)

its defense against legal, equitable and/or other attack, and also, if the trustee is a corporation and/or a person or persons other than said George S. Gaylord and/or Gertrude H. Gaylord above named (the word "corporation" including a national banking association) reasonable fees or compensation for the services of the trustee in the administration of this trust.

ARTICLE IV.

The entire net income received from the trust estate and available for distribution shall be paid and distributed by the trustee, either monthly, quarterly or semiannually as the circumstances and condition of the trust estate will most conveniently permit, but in any event annually, to Margaret Gaylord Ruppel and Gertrude Gaylord (who are the daughters of said George S. Gaylord and Gertrude H. Gaylord above named, the said Margaret Gaylord Ruppel having been born on the 10th day of November, 1904, and the said Gertrude Gaylord having [65] been born on the 31st day of May, 1916) and the survivor of said daughters Margaret Gaylord Ruppel and Gertrude Gaylord, share and share alike if both of them be then living; provided, however, that in the event of the death of either said Margaret Gaylord Ruppel or Gertrude Gaylord prior to the termination of this trust leaving surviving her any lawful issue, then the share of the net income of the trust estate which said Margaret Gaylord Ruppel or Gertrude Gaylord so

Exhibit B—(Continued)

dying would otherwise be entitled to receive and have paid to her if she had continued to live, shall be paid to such lawful issue of her as long as such lawful issue shall continue to live during the existence of this trust, such issue to take by right of representation and per stirpes and not per capita. While any beneficiary of this trust is a minor or otherwise legally incapacitated to handle personally any of the net income of the trust estate payable to him or her, then the same or any part thereof may by the trustee be paid to such beneficiary's duly appointed guardian or guardians, if any. Any part of the net income of the trust estate which the trustee would otherwise pay as in this Article IV above provided directly to any beneficiary of this trust and/or his or her guardian or guardians, if any, may, in the sole judgment and discretion of the trustee, instead of such direct payment by the trustee, be applied by the trustee to the use and/or for the proper care, maintenance and/or support and/or education [66] of such beneficiary.

ARTICLE V.

This trust shall ipso facto cease and terminate upon the happening of either of the following events, whichever shall first happen: the attainment of the age of thirty (30) years by said Gertrude Gaylord or her death prior to her attaining such age of thirty (30) years.

Exhibit B—(Continued)

ARTICLE VI.

Upon the termination of this trust as hereinabove in Article V provided, all of the trust estate then in the possession or under the control of the trustee as the same then exists, shall immediately vest in and be delivered, paid, conveyed, assigned and transferred by the trustee unto said Margaret Gaylord Rupper and Gertrude Gaylord or the survivor of them living at the time of said termination of this trust, share and share alike, however, if both of them shall then be living; provided, however, that in the event of the death of either of them prior to said termination of this trust leaving her surviving at the time of said termination of this trust lawful issue, then the share of the trust estate which said Margaret Gaylord Ruppel or Gertrude Gaylord so dying would have taken hereunder if she had been living at the time of said termination of this trust shall, upon said termination of this trust, immediately vest in and be delivered, paid, conveyed, assigned and transferred unto her said lawful issue, such lawful issue, however, to take per stirpes and by right of representation and not [67] per capita. In the event that upon the termination of this trust as hereinabove in Article V provided there shall then be living neither said Margaret Gaylord Ruppel nor said Gertrude Gaylord nor any lawful issue of either of them, then upon said termination of this trust all of the trust estate then in the possession

Exhibit B—(Continued)

or under the control of the trustee as the same then exists shall immediately vest in and be delivered, paid, conveyed, assigned and transferred unto said Gertrude H. Gaylord, the wife of said George S. Gaylord.

ARTICLE VII.

Every beneficiary of this trust is hereby restrained from in any manner anticipating, impairing, encumbering, alienating and/or disposing of his or her right, interest and/or estate, or any thereof, in and/or to any principal and/or income of the trust estate, and is without power so to do, nor shall any such right, interest and/or estate be subject to any liability or obligation of him or her or to any judgment, attachment, garnishment, execution, process of law, transfer by operation of law, bankruptcy proceeding or claim or demand of any creditor or other person than the beneficiary named. All payments, deliveries and distributions to be made under the provisions of this trust, unless in this declaration otherwise expressly provided, shall be payable, deliverable or distributable and only be made directly and personally to the beneficiary [68] or beneficiaries concerned and upon his, her or their personal receipt therefor and not otherwise, which personal receipt shall be a condition precedent to the making of any such payment, delivery or distribution.

Exhibit B—(Continued)

ARTICLE VIII.

In making any payment, distribution or delivery of any part of the principal of the trust estate the trustee shall make all divisions, partitions, allotments and distributions to effect such payment, delivery or distribution as and according to such method or procedure as the trustee may in the sole judgment and discretion of the trustee deem proper, and any and all acts of the trustee in determining the relative values of the property of the trust estate for the purpose of such division, partition, allotment, distribution and/or payment shall be conclusive on all persons interested therein. The trustee shall also make such conveyances, assignments and transfers and execute such writings and instruments as may be necessary to confirm in the payee, deliverer or distributee hereunder title and possession to the part of the principal of the trust estate so paid, delivered or distributed.

ARTICLE IX.

In the event that any provision or provisions of this instrument or trust is or are, or is or are adjudged by a court of competent jurisdiction to be for any reason invalid or unenforceable, then the remainder hereof, dis- [69] regarding such provision or provisions, shall subsist and be carried into effect. The invalidity of any use or trust herein declared, if ever decreed by a court of competent jurisdiction, shall not vitiate such as are valid.

Exhibit B—(Continued)

ARTICLE X.

Said George S. Gaylord and Gertrude H. Gaylord, his wife, or either of them, shall have the right at any time, with the written consent of the trustee but not otherwise, to add to this trust other property which, upon acceptance thereof by the trustee, shall become a part of the trust estate to be held in trust for the uses and purposes set forth in this instrument and upon all of the terms and conditions hereof.

ARTICLE XI.

Said George S. Gaylord and Gertrude H. Gaylord, his wife, or either of them, shall have the right at any time to resign as trustee of this trust by signing an instrument in writing declaring that they or he or she (as the case may be) so resigns as the trustee of this trust and acknowledging the execution of such instrument before a notary public or other officer authorized to take acknowledgments, which acknowledgment shall be certified so as to entitle the same to be recorded, and by recording such instrument in the office of the County Recorder of the County of Los Angeles, State of California. Said instrument in writing of such resignation shall be effective upon and as of the time of such recordation. In the event of the death of either said [70] George S. Gaylord or Gertrude H. Gaylord, or his or her resignation as trustee of this trust, or his or her inability or incapacity to

Exhibit B—(Continued)

act as such trustee, then the other one of said two persons, viz., George S. Gaylord and Gertrude H. Gaylord, shall act and be entitled to act as trustee of this trust and as such trustee shall have all rights, powers, authority, discretion and exemptions in this instrument provided for the trustee of this trust. Said George S. Gaylord shall have the right by an instrument in writing signed by him, and acknowledged by him before a notary public, or other officer authorized to take acknowledgments, which acknowledgment shall be certified so as to entitle the same to be recorded, and recorded in the office of said County Recorder, to appoint the successor or successors as the trustee (whether one or more) of this trust in the event that neither of the two original trustees of this trust, viz., said George S. Gaylord and Gertrude H. Gaylord, is acting as the trustee. In the absence of such appointment by said George S. Gaylord, said Gertrude H. Gaylord shall have the right by an instrument in writing signed by her and acknowledged by her before a notary public, or other officer authorized to take acknowledgments, and certified so as to entitle the same to be recorded, and recorded in the office of said County Recorder, to appoint such successor or successors as the trustee (whether one or [71] more) of this trust in the event that neither of the two original trustees of this trust, viz., said George S. Gaylord and Gertrude H. Gaylord, is acting as the trustee. In the event of the death of said George S. Gaylord or his resignation as

Exhibit B—(Continued)

trustee of this trust, or his inability or incapacity to act as such trustee, and of the death of said Gertrude H. Gaylord, or her resignation as the trustee of this trust, or her inability or incapacity to act as such trustee, then, in any such event and in the absence of any such appointment by said George S. Gaylord or Gertrude H. Gaylord of the successor or successors as such trustee, The Northern Trust Company, of Chicago, Illinois, any successor and/or assign of said corporation whether by way of consolidation, merger, transfer of trust business, conversion into a state bank or otherwise, shall ipso facto succeed and act as the trustee of this trust.

ARTICLE XII.

The word "trustee" as used in this instrument, means, unless otherwise expressly indicated, not only said first named trustee George S. Gaylord and Gertrude H. Gaylord and the survivor of them, but as well their successor or successors or the successor or successors of either of them as trustee or trustees (as the case may be) of this trust, the singular number including the plural where necessary. No bond or bonds of other security whatever shall ever be [72] required of the trustee for the performance of any duty or trust hereunder.

In Witness Whereof said George S. Gaylord and Gertrude H. Gaylord as trustee have set their hands and seals to this instrument this 7th day of November, 1935, at Pasadena, California.

Exhibit B—(Continued)

Executed in Quadruplicate.

(Seal) GEORGE S. GAYLORD

(Seal) GERTRUDE H. GAYLORD

State of California,

County of Los Angeles—ss.

On this 11th day of December, 1935, before me J. C. Humphreys, a Notary Public in and for said County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared George S. Gaylord and Gertrude H. Gaylord, his wife, personally known to me to be the persons whose names are subscribed to the within and foregoing instrument, and acknowledged to me that they executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal in said county the day and year in this certificate first above written.

(Notarial Seal) J. C. HUMPHREYS

Notary Public in and for the County of Los Angeles, State of California. [73]

State of California,

County of Los Angeles—ss.

Before me, the undersigned authority, a Notary Public in and for Los Angeles County, California, on this day personally appeared George S. Gaylord and Gertrude H. Gaylord, his wife, both known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to

Exhibit B—(Continued)

me that they each executed the same for the purposes and consideration therein expressed, and the said Gertrude H. Gaylord, wife of the said George S. Gaylord, having been examined by me privily and apart from her husband and having the same fully explained to her, she, the said Gertrude H. Gaylord, acknowledged such instrument to be her act and deed, and she declared that she had willingly signed the same for the purposes and consideration therein expressed, and that she did not wish to retract it.

Given Under My Hand and Seal of Office, this 6th day of January, 1938.

(Notarial Seal) J. C. HUMPHREYS

Notary Public in and for Los Angeles County,
California

My commission expires June 29th 1939 [74]

EXHIBIT C

DECLARATION BEING PART OF A CERTAIN
DECLARATION OF TRUST DATED
NOVEMBER 7, 1935.

Know All Men By These Presents:

That Whereas the undersigned, George S. Gaylord and Gertrude H. Gaylord, his wife, of the City of Pasadena, in the County of Los Angeles, State of California, do in and by an instrument of even date herewith entitled Declaration of Trust certify and declare and in and by said instrument have

certified and declared that they hold and shall and will hold the following described personal property, to-wit: seven thousand (7,000) shares of the common capital stock of Marathon Paper Mills Company, a Wisconsin corporation, of the par value of Twenty-five Dollars (\$25.00) per share, and any and all proceeds thereof, In Trust, Nevertheless, for the uses and purposes and upon the terms and conditions set forth in said Declaration of Trust, reference to which Declaration of Trust is hereby made for further particulars thereof; Now, Therefore, said George S. Gaylord and Gertrude H. Gaylord do further certify and declare that the trust created and provided for in said Declaration of Trust was always intended and is intended by said trustors and trustees, George S. Gaylord and Gertrude H. Gaylord, to be and is and shall always be absolutely irrevocable and that this further declaration of said undersigned is and is intended to be and shall always be [75] a part of said Declaration of Trust and is and is intended to be and shall always be taken with and construed as a part of said Declaration of Trust the same as though this present declaration had been physically incorporated in said Declaration of Trust.

In Witness Whereof, said George S. Gaylord and Gertrude H. Gaylord, said trustors and trustees, have set their hands and seals to this instrument as of this 7th day of November, 1935, At Pasadena, California.

Executed in Quadruplicate.

(Seal)

GEORGE S. GAYLORD

(Seal)

GERTRUDE H. GAYLORD

State of California,

County of Los Angeles—ss.

George S. Gaylord, being first duly sworn, deposes and says that he is the George S. Gaylord named in the foregoing instrument and that he has read and understands the same and that all statements made in said instrument are and each of said statements is true and correct.

GEORGE S. GAYLORD

Subscribed and sworn to before me this 27th day of March, 1940.

(Notarial Seal) J. C. HUMPHREYS

Notary Public in and for the County of Los Angeles, State of California. [76]

State of California,

County of Los Angeles—ss.

Gertrude H. Gaylord, being first duly sworn, deposes and says that she is the Gertrude H. Gaylord named in the foregoing instrument and that she has read and understands the same and that all statements made in said instrument are and each of said statements is true and correct.

GERTRUDE H. GAYLORD

Subscribed and sworn to before me this 27th day of March, 1940.

(Notarial Seal) J. C. HUMPHREYS

Notary Public in and for the County of Los Angeles, State of California.

State of California,

County of Los Angeles—ss.

On this 27th day of March, 1940, before me, J. C. Humphreys, a Notary Public in and for said County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared George S. Gaylord and Gertrude H. Gaylord, his wife, personally known to me to be the persons whose names are subscribed to the within and foregoing instrument, and acknowledged to me that they executed the same. [77]

In Witness Whereof, I have hereunto set my hand and affixed my official seal in said county the day and year in this certificate first above written.

(Notarial Seal) J. C. HUMPHREYS

Notary Public in and for the County of Los Angeles, State of California.

State of California,

County of Los Angeles—ss.

Before me, the undersigned authority, a Notary Public in and for Los Angeles County, California, on this day personally appeared George S. Gaylord and Gertrude H. Gaylord, his wife, both known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they each executed the same for the purposes and consideration therein expressed, and the said Gertrude H. Gaylord, wife of the said George S. Gaylord, having been examined by me privily and apart from her husband and having the same fully explained to her, she, the said Gertrude H. Gay-

lord, acknowledged such instrument to be her act and deed, and she declared that she had willingly signed the same for the pur- [78] poses and consideration therein expressed, and that she did not wish to retract it.

Given Under My Hand and Seal of Office, this 27th day of March, 1940.

(Notarial Seal) J. C. HUMPHREYS

Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires June 26, 1943. [79]

EXHIBIT D

Form 709	GIFT TAX RETURN	6th Calif. 556 2,531.27
Treasury Department Internal Revenue Service	CALENDAR YEAR 1935	
Revised December 1934	(To be filed in duplicate under the provisions of the Gift Tax Act of 1932, as Amended)	
(Space for use of Collector)	Name of Donor George S. Gaylord Address: 639 Rosemont Ave Pasadena Calif Citizenship U S A Residence above	(Space for use of Bureau)

Have you (the donor), during the calendar year indicated above, without an adequate and full consideration in money or money's worth, made any transfer exceeding \$5,000 in value (or regardless of value if a future interest) as follows? (Answer "Yes" or "No.") yes

Exhibit D—(Continued)

1. By the creation of an irrevocable trust for the benefit of another: yes;
2. By making additions to an irrevocable trust previously created for the benefit of another: no;
3. By permitting a beneficiary (other than yourself) to receive the income from a revocable trust, where you possessed the power of revocation and chose during the year not to exercise it, whether such trust was created before or after the enactment, on June 6, 1932, of the Gift Tax Act of 1932: no;
4. By relinquishing a power to revoke a trust created for the benefit of another: no;
5. By permitting another to withdraw funds from a joint bank account which were deposited by you: no;
6. By irrevocably assigning a life insurance policy, or by naming a beneficiary of a policy without retaining any of the legal incidents of ownership therein: yes;
7. By paying a premium under an insurance policy in which you retain none of the legal incidents of ownership and the proceeds of which are payable to a beneficiary other than yourself or your estate: no;
8. By conveying title to another and yourself as joint tenants or to your wife or husband and yourself as tenants by the entirety: no;
9. by any other method, direct or indirect, whereby another received a gift: no.

If the answer is "Yes" to any of the foregoing, such transfer should be fully disclosed under Schedule A or B.

Exhibit D—(Continued)

COMPUTATION OF AMOUNT OF NET
GIFTS FOR YEAR

CS

1. Amount of gifts for year other than charitable, etc., gifts (item c, schedule A)	\$125,278.08	
2. Amount of charitable, public, and similar gifts for year (item c, schedule B)	50.00	
3. Total amount of gifts for year (item 1 plus item 2).....	\$125,328.08	
4. Amount of charitable, public, and similar gifts for year (item c, schedule B)	50.00	
5. Specific exemption claimed (not exceeding \$50,000, less total amount of specific exemption claimed for preceding years)	50,000.00	
6. Total deductions (item 4 plus item 5).....	50,050.00	
7. Amount of net gifts for year (item 3 minus item 6)	\$ 75,278.08	

[80]

COMPUTATION OF TAX

1. Amount of net gifts for year (item 7, above).....	\$ 75,278.08	
2. Total amount of net gifts for preceding years (item b, schedule C) 1st sup. Int. 2.97.....	0.00	
3. Total net gifts (item 1 plus item 2).....	\$ 75,278.08	
4. Tax computed on item 3		
5. Tax computed on item 2.....		
6. Tax on net gifts for year (item 4 minus item 5)	\$ 2,531.27	

Exhibit D—(Continued)

AFFIDAVIT

I swear (or affirm) that this return, including the accompanying schedules and statements, if any, has been examined by me, and to the best of my knowledge and belief, is a true, correct, and complete return for the calendar year stated, pursuant to the Gift Tax Act of 1932, as amended, and the regulations issued thereunder, and no transfer required by said law and regulations to be returned other than the transfer or transfers disclosed herein under schedules A or B was made by me (the donor) during said calendar year.

G. S. GAYLORD

(Signature of donor/executor)

Sworn to and subscribed before me this 3rd day of February, 1936.

(Notarial Seal)

ALICE F. JACKSON

(Signature and title of officer administering oath)

[81]

SCHEDULE A.—GIFTS DURING YEAR OTHER THAN CHARITABLE, PUBLIC, AND SIMILAR GIFTS

Item No.	Description of gift, motive, donee's name and address, and relationship to donor	Date of Gift	Value at Date of Gift
5000	Shares of common stock of Marathon Paper Mills Co. of Wausau, Wis., to a trust for benefit of Margaret G. Ruppel and Gertrude Gaylord my daughters	Nov 7 1935	\$125,000.00 OK e25
1	5 room residence 1015 Davis St., Glendale, Calif., assessed by county tax appraiser at \$1200.00 1935: Tract 5086 as per book 110, Pages 63-64 map of Los Angeles County	June 11 '35	3000. mo R e100

Exhibit D—(Continued)

Schedule A—(Continued)

Item No.	Description of gift, motive, donee's name and address, and relationship to donor	Date of Gift	Value at Date of Gift
10 No data SWE	Shares Latisteel Corp. 1310 E. Foothill Blvd., Pasadena, Calif., new corporation 100.00 par. 1000.00 represents amount paid in on above stock	Dec 12 1935	1000.00 SWE
1	Northwestern Mutual Life Ins. Co. policy 653962, see attached	Dec 13 '35	1800.06
1	Northwestern Mutual Life Ins. Co. policy 912851, see attached	Dec 13 '35	1499.33
1	Northwestern Mutual Life Ins. Co. policy 2037662, see attached	Dec 13 '35	7662.85
1	New York Life Ins. Co. policy 6175331, see attached. All above Insurance policies conveyed to Gertrude H. Gaylord, my wife, Margaret G. Ruppel and Gertrude Gaylord, my daughters, share and share alike or to the survivors.	Dec 10 '35	315.84
(a)	Total		\$140,278.08
(b)	Less total exclusions not exceeding \$5,000 for each donee (except future interests)		15,000.00
(c)	Included amount of gifts for year other than charitable, etc., gifts		\$125,278.08

Exhibit D—(Continued)

SCHEDULE B.—CHARITABLE, PUBLIC, AND SIMILAR
GIFTS DURING YEAR

Item No.	Description of gift, name and address of donee, and character of institution	Date of Gift	Value at Date of Gift
	Community Chest of Pasadena Calif	July 1935	\$50.00
(a)	Total		\$
(b)	Less total exclusions not exceeding \$5,000 for each donee (except future interests).....		.....
(c)	Included amount of charitable, public and similar gifts for year		\$

SCHEDULE C.—RETURNS, AMOUNTS OF SPECIFIC EX-
EMPTION, AND NET GIFTS FOR PRECEDING
YEARS (Subsequent to June 6, 1932)

[Followed by printed form not filled in]

[82]

Northwestern Mutual Life Insurance Company—face of policy \$2500.00, issued March 2, 1906, \pm 653962 net cash value December 13, 1935, \$1800.06 paid up as to premiums. Straight Life.

Northwestern Mutual Life Insurance Company—face of policy \$3000.00, issued February 1, 1912, \pm 912851 net cash surrender value December 13, 1935 \$1499.33 paid up as to premiums. Straight Life.

Northwestern Mutual Life Insurance Company—face of policy \$50,000.00, issued Dec. 1, 1927 \pm 2037662 net cash surrender value December 13, 1935, \$10,930.94 less loan on policy \$3267.09 equals net value \$7662.85 premiums \$2131.00 Straight Life.

New York Life Insurance Company—face of policy \$8415.00 issued July 28, 1917 \pm 6175331 net cash surrender value December 10, 1935. \$5145.84 less loan against same \$4830 equals \$315.84 net value. Straight Life.

All values furnished by Insurance Cos.

[83]

EXHIBIT E

Form 709

Treasury Department
Internal Revenue
Service

Revised December 1934

GIFT TAX RETURN

CALENDAR YEAR 1935

6th Calif.
683

(To be filed in duplicate under the provisions of the
Gift Tax Act of 1932, as Amended)

(Space for use of
Bureau)

Name of Donor Gertrude H. Gaylord
Address 639 Rosemont Ave., Pasadena, Calif.
Citizenship U S A
Residence Above

S

(Space for use of
Collector)

Have you (the donor), during the calendar year indicated above, without an adequate and full consid-
eration in money or money's worth, made any transfer exceeding \$5,000 in value (or regardless of value
if a future interest) as follows? (Answer "Yes" or "No.") : Yes.

Exhibit E—(Continued)

1. By the creation of an irrevocable trust for the benefit of another: yes;
2. By making additions to an irrevocable trust previously created for the benefit of another: no;
3. By permitting a beneficiary (other than yourself) to receive the income from a revocable trust, where you possessed the power of revocation and chose during the year not to exercise it, whether such trust was created before or after the enactment, on June 6, 1932, of the Gift Tax Act of 1932: no;
4. By relinquishing a power to revoke a trust created for the benefit of another: no;
5. By permitting another to withdraw funds from a joint bank account which were deposited by you: no;
6. By irrevocably assigning a life insurance policy or by naming a beneficiary of a policy without retaining any of the legal incidents of ownership therein: no;
7. By paying a premium under an insurance policy in which you retain none of the legal incidents of ownership and the proceeds of which are payable to a beneficiary other than yourself or your estate: no;
8. By conveying title to another and yourself as joint tenants or to your wife or husband and yourself as tenants by the entirety: no;
9. By any other method direct or indirect, whereby another received a gift: no.

If the answer is "Yes" to any of the foregoing, such transfer should be fully disclosed under schedule A or B.

Exhibit E—(Continued)
COMPUTATION OF AMOUNT OF NET

GIFTS FOR YEAR

CS

1. Amount of gifts for year other than charitable, etc., gifts (item c, schedule A)	\$40,000.00	
2. Amount of charitable, public, and similar gifts for year (item c, schedule B)	0	
3. Total amount of gifts for year (item 1 plus item 2)	\$40,000.00	
4. Amount of charitable, public, and similar gifts for year (item c, schedule B)	0	
5. Specific exemption claimed (not exceeding \$50,000, less total amount of specific exemption claimed for preceding years)	\$40,000.00	
6. Total deductions (item 4 plus item 5)	40,000.00	
7. Amount of net gifts for year (item 3 minus item 6)	\$	0

[84]

COMPUTATION OF TAX
[Followed by printed form not filled in]

AFFIDAVIT

I swear (or affirm) that this return, including the accompanying schedules and statements, if any, has been examined by me, and to the best of my knowledge and belief, is a true, correct, and complete return for the calendar year stated, pursuant to the Gift Tax Act of 1932, as amended, and the regulations issued thereunder, and no transfer required by said law and regulations to be returned other than the transfer or transfers disclosed herein under schedules A or B was made by me (the donor) during said calendar year.

GERTRUDE H. GAYLORD

(Signature of donor/executor)

Exhibit E—(Continued)

Sworn to and subscribed before me this 3rd day of February, 1936.

(Notarial Seal)

ALICE F. JACKSON

(Signature and title of officer administering oath)

AFFIDAVIT

I swear (or affirm) that I prepared this return for the person named herein and that this return, including the accompanying schedules and statements, if any, is a true, correct, and complete statement of all the information respecting the donor's gift tax liability of which I have any knowledge.

G. S. GAYLORD D

(Signature of person preparing return)

Sworn to and subscribed before me this 3rd day of February, 1936.

(Notarial Seal)

ALICE F. JACKSON

(Signature and title of officer administering oath)

[85]

SCHEDULE A.—GIFTS DURING YEAR OTHER THAN CHARITABLE, PUBLIC, AND SIMILAR GIFTS

Item No.	Description of gift, motive, donee's name and address, and relationship to donor	Date of Gift	Value at Date of Gift
2000	Shares of Common Stock of Marathon Paper Mills Co. of Wausau Wis at 25	Nov 7 1935	OK \$50,000.00
	Data submitted Geo. S. Gaylord F. B. X ref. donee says 7000 shs?		

Exhibit E—(Continued)

Schedule A.—(Continued)

(a) Total	\$50,000.00
(b) Less total exclusions not exceeding \$5,000 for each donee (except future interests)	10,000.00
(c) Included amount of gifts for year other than charitable, etc., gifts	\$40,000.00

**SCHEDULE B.—CHARITABLE, PUBLIC, AND SIMILAR
GIFTS DURING YEAR**

Item No.	Description of gift, name and ad- dress of donee, and character of Institution	Date of Gift	Value at Date of Gift
	None		\$

(a) Total	\$
(b) Less total exclusions not exceeding \$5,000 for each donee (except future interests).....	.....
(c) Included amount of charitable, public, and sim- ilar gifts for year	\$

**SCHEDULE C.—RETURNS, AMOUNTS OF SPECIFIC EX-
EMPTION, AND NET GIFTS FOR PRECEDING
YEARS (Subsequent to June 6, 1932)**

Calendar Year	Collection District in which Prior Return was filed	Amount of Specific Exemption	Amount of Net Gifts
	None	\$	\$

(a) Total amount of specific ex- emption claimed for preceding years	\$.....
(b) Total amount of net gifts for preceding years	\$.....

EXHIBIT F

SHOWING COST OF MARATHON PAPER
MILLS COM. STOCK

Menasha Printing and Carton Co.

Value March 1, 1913\$350,000.00

July 1, 1917 invested 152,500.00

Less—Preferred stock sold July 1917..... 20,000.00

\$482,500.00

Received for 3,357 shares Menasha Printing and Carton Co. stock, securities of Marathon Paper Mills Co., as follows:

\$1,038,000.00 par 5½% Bonds.....\$ 1,038,000.00

6,728 shares common stock at 130.30 876,658.40

\$ 1,914,658.40

\$1,038,000.00 equals 54.21% of total received

\$ 876,658.40 equals 45.79% of total received

45.79% of \$482,500.00 equals \$220,936.75 or original cost of 6,728 shares of common stock or \$32.84 per share.

Stock was divided four for one, making original cost of present common shares \$8.21 per share.

[87]

EXHIBIT G

MEMORANDUM SHOWING HOW VALUE
OF STOCK OF MARATHON PAPER
MILLS COMPANY, OWNED BY GEORGE
S. GAYLORD, IS ESTABLISHED

This stock originated with various investments in Menasha Carton Company, a corporation, which was merged August 1917, with Menasha Printing Company to form the Menasha Printing & Carton Company. The basis for the new securities issued

in this merger was the actual value of physical assets of the merged companies which were appraised at \$186,000.00 for the Menasha Carton Company, and \$774,000.00 for the Menasha Printing Company. Common stock in the amount of \$500,000.00 par value and preferred stock or bonds in the amount of \$460,000.00 par value were issued by the new company. As the new securities were issued for physical assets only, the par value of the stock and bonds issued does not reflect the fair market value. The fair market value includes goodwill valued under ordinary circumstances by taking the average earnings for a number of years just prior to date value is to be determined. As the Menasha Carton Company is the Company in which Mr. Gaylord's holdings originated, and on which the value of his holdings in Marathon Paper Mills Company depended, it becomes necessary to arrive at the value as of August 1917 of his interest in that company as his basis for his Marathon Paper Mills Company stock.

Due to the entry of the United States in war in 1917, business in most every line had increased materially over the preceding years and the value of the business could not be [88] calculated on the basis of the prior years. More weight necessarily had to be given to the present and future, particularly when a business had just started a few years prior to that time. Market quotations for stocks generally had reached a very high level by August 1917. The earnings of Menasha Carton Company, Menasha Printing Company and the consolidated

company, obtained from old records of the companies show a very rapid rise starting in 1917, which continued through the subsequent years, substantiating the value existing in 1917. These earnings are as follows:

	Menasha Carton Company	Menasha Printing Company	Consolidated Company
1915	\$29,369.09	\$ 99,889.97	\$
1916	28,225.90	286,271.56	.....
1917 (a)	56,220.99	.....	(b) 303,236.91
1918	.....	.....	297,825.12
1919	.....	.....	232,595.87

(a) Seven months only—same basis for twelve months—
\$96,378.84

(b) Includes \$38,289.80 Carton Company profits for five months.

Tax payer believes that the 1917 earnings of the Carton Company capitalized at ten per cent reflect correctly the fair market value of the stock of that company establishing the basis of his stock in Marathon Paper Mills Company although subsequent earnings of the new company are much greater. The rate per share of Marathon stock is arrived by using the value of Marathon Carton Company stock as of August 1, 1917, based upon earnings for the first seven months of that year capitalized at 10% as follows: [89]

Value of Carton Company stock, August 1917.....	\$963,788.40
G. S. Gaylord's share—337/726	\$447,378.40
Additional amount paid for shares in new corporation	152,161.11
<hr/>	
Total basis 1,960 shares Menasha Printing & Carton Co. and 190 shares of preferred stock (or bonds)	599,539.51

Less—preferred stocks (or bonds) sold..... 19,000.00

Net value of stock (average per share

\$296.194\$580,539.51

[90]

COMPUTATION OF BASIS OF MARATHON PAPER MILLS COMPANY STOCK

Value of Menasha Carton Company stock August
1917, based upon earnings of Carton Co. seven
months of 1917\$963,788.40

G. S. Gaylord share (337/726)..... 447,378.40

Additional amount paid to acquire 1960 shares of
common and 190 shares of preferred (also referred
to as bonds) Menasha Printing and Carton Co.... 152,161.11

599,539.51

Less—value allocated to preferred stock or bonds
(later retired) 19,000.00

Net value of common stock (1960 shares)..... 580,539.51

Value per share \$296.194

Deduct cost of sales to employees prior to January

1, 1925—185 shares at \$296.194..... 54,795.89

Net value of 1,775 shares..... 525,743.62

Stock dividend (1-2-25) 100%—reduces value per
share to \$148.097, and increases number of
shares to 3,550.

Less—Cost of—

350 shares exchanged for 432 shares

Robert Gaylord, Inc. (1-2-25)—

350 shares at \$148.097.....\$ 51,833.95

195 shares sold 10-5-25 and 4-1-26 at

148.097 28,878.92 80,712.87

Remaining value for 3,005 shares

(\$148.097 per share) 445,030.75

Add—352 shares acquired (8-24-27) from C. W. Gaylord for 432 shares of Robert Gaylord, Inc. (value based upon value of 3357 shares owned after this was acquired, all of which was exchanged for \$1,914,658.40 in stock and bonds of new corporation—352/3357 of \$1,914,658.40.....	200,762.51
Cost of Marathon stock and bonds.....	645,793.26

[91]

Bonds 54.21% of \$645,793.26 or \$350,084.53

Stock 45.79% of \$645,793.26 or \$295,708.73

Basis for each share—

$$\$295,708.73 \div 6728 = 43.952 \text{ per share}$$

Stock split—4 for 1 December 2, 1929, reducing price to \$10.988 correct basis for all shares sold by George S. Gaylord in 1935, 1936, 1937, 1938 and all excepting last 100 shares sold in 1939, and for all shares sold by Gertrude H. Gaylord acquired by gift from George S. Gaylord, 2-9-32 and for all shares sold by the trustees out of the trust estate acquired from George S. Gaylord and Gertrude H. Gaylord in 1935. The last 100 shares acquired by George S. Gaylord was purchased at \$17.00 per share.

Note—Stock transactions prior to consolidation with Marathon Paper Mills Co. are set forth in Revenue Agents report dated January 20, 1941, on George S. Gaylord in Exhibit A.

[Endorsed]: U.S.B.T.A. Filed Nov. 10, 1941.

[92]

[Title of Board and Cause.]

ANSWER

The Commissioner of Internal Revenue, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, for answer to the petition of the above-named taxpayer, admits and denies as follows:

1 and 2. Admits the allegations contained in paragraphs 1 and 2 of the petition.

3. Admits that the taxes in controversy are income taxes for the calendar years 1936, 1937, 1938 and 1939; denies the remainder of the allegations contained in paragraph 3 of the petition.

4. (I) to (LII), inclusive. Denies the allegations of error contained in paragraphs (1) to (LII), inclusive, of paragraph 4 of the petition.

5. (a) The respondent admits that as of November 7, 1935, the petitioner, George S. Gaylord, and his wife, [93] Gertrude H. Gaylord, executed a certain declaration of trust in which they named themselves as "trustee" (sic) and their two daughters, Margaret Gaylord Ruppel and Gertrude Gaylord, as beneficiaries, and in the event of the death of either or both of them during the existence of the trust, the issue of either or both of them, as the case might be, due to the death of one or both of the first-named beneficiaries.

Respondent also admits that the trust embraced the property substantially of the kind and amount described by the petitioner, but because respondent does not know as a matter of fact whether or not it

was recorded in the places and under the circumstances stated by the petitioner, and does not know as a matter of fact whether or not the purported gift tax returns were filed and gift taxes paid thereon in the manner and form related by petitioner, and does not know as a matter of fact whether the other matter and things related by petitioner existed, happened or were done in the manner and at the time stated by the petitioner in said subparagraph (a) of paragraph 5 of the petition, the respondent therefore, for lack of information sufficient upon the basis of which to form a belief as to the truth or accuracy thereof, denies each and every allegation contained in said subparagraph (a) not expressly admitted. Furthermore, respondent denies that the trust dated November 7, 1935, created by the petitioner was an irrevocable trust.

[94]

(b) Denies the allegations contained in subparagraph (b) of paragraph 5 of the petition.

(c) Respondent admits that the two named beneficiaries of said trust, Margaret Gaylord Ruppel and Gertrude Gaylord Bruce (named in said declaration of trust as Gertrude Gaylord), are the daughters of the petitioner, George S. Gaylord, and said Gertrude H. Gaylord, his wife, and that said Margaret Gaylord Ruppel was born on November 10, 1904, and said Gertrude Gaylord Bruce was born on May 31, 1916, and that each of said beneficiaries has lawful issue now living. Respondent also admits that said Margaret Gaylord Ruppel has two children now living, to-wit, a daughter, Barbara

Brunker, who was born October 14, 1925, and a son, Robert Brunker, born June 3, 1928. It is further admitted that said Gertrude Gaylord Bruce has one child, to-wit, a daughter, Ann Bruce, born April 20, 1938. For lack of information sufficient upon the basis of which to form a belief as to the truth or accuracy of the remaining allegations of said subparagraph (c) of paragraph 5 of the petition, respondent denies the same.

(d) Denies the allegations contained in subparagraph (d) of paragraph 5 of the petition. [95]

(e) For lack of information sufficient upon the basis of which to form a belief as to the truth or accuracy of subparagraph (e) of paragraph 5 of the petition, respondent denies the same.

(f) Denies the allegations contained in subparagraph (f) of paragraph 5 of the petition.

(g) For a lack of information sufficient upon the basis of which to form a belief as to the truth or accuracy of subparagraph (g) of paragraph 5 of the petition, respondent denies the same.

(h) and (i). Denies the allegations contained in subparagraphs (h) and (i) of paragraph 5 of the petition.

(j) (1) and (2). Denies the allegations contained in subparagraph (j), and subsections (1) and (2) thereof, of paragraph 5 of the petition.

(k) Denies the allegations contained in subparagraph (k) of paragraph 5 of the petition.

(l) Admits that in or about March, 1938, the petitioner, George S. Gaylord, in his individual capacity, and his said wife, Gertrude H. Gaylord,

in her individual and personal capacity, for the heretofore mentioned trust, by its trustees George S. Gaylord and Gertrude H. Gaylord, purchased each an undivided one-third interest in business property situated in the City of Santa Monica, California, consisting at the [96] time, of land improved with a storeroom building occupied by several different tenants holding under separate rental contracts or leases, and admits that during said year that the building was acquired the above-described owners thereof demolished and razed the old building and commenced the erection of the new building, but denies that the petitioner and his co-owners, as he alleges, did not contemplate and intend at the time of the purchase of said property of said property to demolish the old building that was thereon and to erect in the place thereof a new building.

(m) Admits that the petitioner, George S. Gaylord, acquired a so-called ranch near Carmel, California, part of which was devoted to a pear orchard containing several hundred trees. For lack of information sufficient upon the basis of which to form a belief as to the truth or accuracy of the remaining allegations of said subparagraph(m) of paragraph 5 of the petition, respondent denies the same.

6. Denies each and every allegation contained in the petition not hereinbefore specifically admitted or denied. [97]

Wherefore it is prayed that the determination of the Commissioner be approved.

(Signed) J. P. WENCHEL

EAT

Chief Counsel,
Bureau of Internal Revenue.

Of Counsel:

ALVA C. BAIRD,

Division Counsel.

FRANK T. HORNER,

B. M. COON,

Special Attorneys,

Bureau of Internal Revenue.

BMC/fmt 12/3/41

[Endorsed]: U.S.B.T.A. Filed Dec. 9, 1941. [98]

United States Board of Tax Appeals

Docket No. 109273

GERTRUDE H. GAYLORD,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION

The above named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency LA:IT:90D:PB, dated Sep. 17, 1941, and as a basis of her proceeding alleges as follows:

1. The petitioner is an individual with her residence at No. 639 Rosemont Avenue, Pasadena, California. The returns for the periods here involved were filed with the Collector for the Sixth District of California at Los Angeles, California.

2. The notice of deficiency (a copy of which is attached and marked Exhibit A) was mailed to the petitioner on the 17th day of September, 1941.

3. The taxes in controversy are income taxes for the calendar years 1936, 1937, 1938 and 1939 and in the amount of \$8,043.63.

4. The determination of tax set forth in said notice of deficiency is based upon the following errors: [99]

(I) The Commissioner of Internal Revenue (hereinafter for brevity referred to as "Commissioner") erred in determining that there was or is an income tax liability of the petitioner in the sum of \$1,133.38 or any other sum or amount whatsoever other than \$49.03 on or with respect to the or any income of the petitioner for the year 1936.

(II) The Commissioner erred in determining that there was or is a deficiency of \$1,087.40 or any other sum or amount whatsoever in excess of \$49.03 in or with respect to any such tax liability or that there was or is any deficiency or unpaid tax or liability therefor of the petitioner on or with respect to her income for the year 1936 other than \$3.05.

(III) The Commissioner erred in determining that there was or is an income tax liability of the petitioner in the sum of \$14,627.77 or any other

sum or amount whatsoever on or with respect to the or any income of the petitioner for the year 1937.

(IV) The Commissioner erred in determining that there was or is a deficiency of \$4,925.01 or any other sum or amount whatsoever in or with respect to any such tax liability or that there was or is any deficiency or unpaid tax or liability therefor of the petitioner on or with respect to her income for the year 1937.

(V) The Commissioner erred in determining that there was or is an income tax liability of the petitioner in the sum of \$32.51 or any other sum or amount whatsoever on or [100] with respect to the or any income of the petitioner for the year 1938.

(VI) The Commissioner erred in determining that there was or is a deficiency of \$32.51 or any other sum or amount whatsoever in or with respect to any such tax liability or that there was or is any deficiency or unpaid tax or liability therefor of the petitioner on or with respect to her income for the year 1938.

(VII) The Commissioner erred in determining that there was or is an income tax liability of the petitioner in the sum of \$3,381.23 or any other sum or amount whatsoever on or with respect to the or any income of the petitioner for the year 1939.

(VIII) The Commissioner erred in determining that there was or is a deficiency of \$1,998.71 or any other sum or amount whatsoever in or with respect to any such tax liability or that there was or is any deficiency or unpaid tax or liability there-

for of the petitioner on or with respect to her income for the year 1939.

(IX) The Commissioner erred in determining that there was or is a total liability of \$19,174.89 or any other sum or amount whatsoever of the petitioner on or with respect to her income in or for the years 1936, 1937, 1938 and 1939 or any thereof.

(X) The Commissioner erred in determining that there was or is a total deficiency of \$8,043.63 or any other sum or amount whatsoever on or with respect to the income [101] taxes or any income tax or income tax liability of the petitioner on or with respect to the income of the petitioner for the years 1936, 1937, 1938 and 1939 or any of said years.

(XI) The Commissioner erred in determining or holding that the net income as adjusted for the taxable years 1936, 1937, 1938 and 1939 or for any of said years or any net income for said years or any thereof of the trust created by the declaration of trust dated November 7, 1935, made by George S. Gaylord and his wife Gertrude H. Gaylord, of which trust the petitioner and her said husband are first named trustees and their two daughters Margaret Gaylord Ruppel and Gertrude Gaylord (now Gertrude Gaylord Bruce) are two of the beneficiaries of said trust, constitutes or constituted or is or ever was income of the petitioner and her said husband or of either of them as grantors or grantor under the provisions of Section 22(a) and/or Section 166 of the Revenue Acts of 1936 and 1938 and/or the same sections of the Internal Revenue Code or under any of said provisions, or otherwise, or at all.

(XII) The Commissioner erred in determining or holding that 2/7ths or any other part of the net income of said trust as adjusted for each of the years 1936 to 1939, inclusive, or for any of said years, or any net income of said trust should be included in the recomputation or computation of the petitioner's taxable net income for the years 1936 to 1939, inclusive, or for any of said years.

(XIII) The Commissioner erred in determining or [102] holding that for the purpose of computing the capital gains realized by said trust in the years 1936, 1937, 1938 and 1939 or in any of said years or the capital gains allegedly realized by the petitioner in the years 1936, 1937, 1938 and 1939 or any of said years from the sale of shares of the common capital stock of Marathon Paper Mills Company the statutory basis for computing gain or loss on each such sale was or is \$2.83542 per share instead of \$8.21 per share as stated in the income tax returns of said trust filed, and in determining the statutory basis for computing gain or loss on each such share to be any sum or amount whatsoever less than \$10.988.

(XIV) The Commissioner erred in determining or holding that for the purpose of determining the statutory basis for computing gain or loss on each or any such sale the fair market value of the 435 shares or any number of shares of the common stock of Menasha Printing and Carton Company received by said George S. Gaylord on or about August 15, 1917, or of any of said shares, in ex-

change for stock of Menasha Carton Company was or is \$100.00 per share or any other sum or amount whatsoever less than \$296.194 per share.

(XV) The Commissioner erred in determining or holding that while said George S. Gaylord's statutory basis for gain or loss upon the sale or other disposition of the bonds and stock of Marathon Paper Mills Company received by him on or about October 31, 1927, in exchange for 3357 shares of the common stock of Menasha Printing and Carton Company is the same as his basis in the shares given in that exchange, [103] such basis should be apportioned 53.967% to the bonds and 46.033% to the stock received in that exchange or should be apportioned at any other percentage than 54.21% to the bonds or than 45.79% to the stock received in that exchange.

(XVI) The Commissioner erred in determining (see Adjustments To Net Income Taxable Year Ended December 31, 1936, in said notice of deficiency) that there was or is additional income in the amount of \$12,601.08 or any other sum or amount whatsoever other than \$84.78.

(XVII) The Commissioner erred in determining (See under same heading in said notice) that there was or is income from trust in the amount of \$12,516.30 or any other sum or amount whatsoever.

(XVIII) The Commissioner erred in determining (see Explanation of Adjustments for taxable year ended December 31, 1936, in said notice of deficiency) that the portion of the income of what

the Commissioner in his said notice of deficiency refers to as the "Gaylord Trust" held to be taxable to the petitioner was or is \$12,516.30 or any other sum or amount whatsoever, and in determining that any portion of the income of said Gaylord Trust is taxable to the petitioner.

(XIX) The Commissioner erred in determining (see said Explanation Of Adjustments in said notice of deficiency) that there was or is addition to income by increase in capital gain in amount of \$6,749.50 or any other sum or amount whatsoever and in determining that there was or is any addition to income by or because of any increase in capital gain [104] and in determining that there was any increase in capital gain in any sum or amount whatsoever.

(XX) The Commissioner erred in determining that the net income of the trust was or is \$43,807.03 or any other sum or amount whatsoever in excess of \$37,357.53.

(XXI) The Commissioner erred in determining that 2/7ths or \$12,516.30 or any portion or amount of the net income of said trust was or is taxable to the petitioner.

(XXII) The Commissioner erred in determining (see Computation Of Tax Taxable Year Ended December 31, 1936, in said notice of deficiency) that there was or is net income adjusted or otherwise in the sum of \$13,878.16 or any other sum or amount whatsoever in excess of \$1,361.86 or a balance (sur-tax net income) in the sum of \$13,878.16 or any other sum or amount whatsoever in excess of \$1,-

361.86 or net income subject to normal tax in the sum of \$13,578.16 or any other sum or amount whatsoever in excess of \$1,225.67.

(XXIII) The Commissioner erred in determining (see said Computation Of Tax in said notice of deficiency) that there was or is a normal tax at 4% on \$13,578.16 or on any sum or amount whatsoever in excess of \$1,225.67, or a normal tax of \$543.13 or any other sum or amount whatsoever in excess of \$49.03, or that there was or is surtax on the sum of \$13,878.16 or on any other sum or amount whatsoever, or surtax in the amount of \$590.25 or any other sum or amount whatsoever, or that the correct or any income tax liability of the peti- [105] tioner on or with respect to her income for the calendar year 1936 was or is \$1,133.38 or any sum or amount whatsoever in excess of \$49.03, or that there is any deficiency of income tax in the amount of \$1,087.40 or any other sum or amount whatsoever in excess of \$3.05.

(XXIV) The Commissioner erred in determining (see Adjustments To Net Income Taxable Year Ended December 31, 1937, in said notice of deficiency) that there was or is additional income and unallowable deduction or additional income or unallowable deduction in the sum of \$13,120.08 or any other sum or amount whatsoever, or that there was or is income from trust taxable to petitioner in the sum of \$9,449.31 or any other sum or amount whatsoever, or that there was or is capital gain of \$3,385.99 or any other sum or amount whatsoever by way of additional income, or that there was or is

total net income or total net income adjusted of \$63,162.26 or any other sum or amount whatsoever in excess of \$50,326.96.

(XXV) The Commissioner erred in determining (see Explanation Of Adjustments for taxable year ended December 31, 1937, in said notice of deficiency) that \$9,449.32 is taxable to the petitioner as income of said Gaylord Trust and in determining that any income of said Gaylord Trust is taxable to the petitioner.

(XXVI) The Commissioner erred in determining (see said Explanation Of Adjustments on said notice of deficiency) that there was or is addition to income of said trust by increase in capital gain in the sum of \$2,576.80, or by any increase [106] in any capital gain or in any sum or amount whatsoever, and that the net income of trust as adjusted or otherwise was or is \$33,072.58 or any sum or amount whatsoever in excess of \$30,498.78.

(XXVII) The Commissioner erred in determining that 2/7ths or any part of the net income of said trust was or is taxable to the petitioner or that the sum of \$9,449.31 or any other sum or amount whatsoever of the net income of said trust as adjusted or of any net income of said trust or of any income of said trust was or is taxable to the petitioner.

(XXVIII) The Commissioner erred in determining (see Computation Of Tax Taxable Year Ended December 31, 1937, in said notice of deficiency) that the petitioner's net income for or with

respect to the calendar year 1937 as adjusted or otherwise was or is \$63,162.26 or any other sum or amount whatsoever in excess of \$50,326.96 or that the balance (surtax net income) was or is \$63,162.26 or any other sum or amount whatsoever in excess of \$50,326.96 or that the net income subject to normal tax was or is \$62,862.26 or any other sum or amount whatsoever in excess of \$50,026.96.

(XXIX) The Commissioner erred in determining (see said Computation Of Tax in said notice of deficiency) that petitioner was or is liable for normal tax at 4% on \$62,862.26 or any other sum or amount whatsoever in excess of \$50,026.96 or that the petitioner was or is liable for normal tax in the amount of \$2,514.49 or any other sum or amount whatsoever in excess of \$2,001.08 or that the petitioner is liable for surtax on \$63,162.26 or on any other sum or amount whatsoever [107] in excess of \$50,326.96 or that there was or is surtax in the amount of \$12,113.28 or any other sum or amount whatsoever in excess of \$7,701.68 or that the correct income tax liability was or is \$14,627.77 or any other sum or amount whatsoever in excess of \$9,702.76 or that there is deficiency of income tax in the amount of \$4,925.01 or any other sum or amount whatsoever or that there is any deficiency in any amount whatsoever for or with respect to any tax on any income of the petitioner for, in or with respect to the year 1937.

(XXX) The Commissioner erred in determining (see Adjustments To Net Income Taxable Year Ended December 31, 1938, in said notice of defi-

ciency) that there was or is additional income and unallowable deductions or additional income or any unallowable deduction or deductions in the total sum of \$18,779.91 or any other sum or amount whatsoever in excess of \$466.35 and in determining that there was or is income from trust taxable to petitioner in the sum of \$7,229.86 or any other sum or amount whatsoever or any income from any trust taxable to the petitioner, and in determining that there was or is any long-term capital gain in the sum of \$6,007.59 or any other sum or amount whatsoever taxable as additional income to the petitioner, and in determining that loss in the amount of \$5,-076.11 or any part thereof should be disallowed.

(XXXI) The Commissioner erred in determining that there was or is net income in the amount of \$11,042.79 or any other sum or amount whatsoever.

[108]

(XXXII) The Commissioner erred in determining (see Explanation Of Adjustments for Taxable Year Ended December 31, 1938, in said notice of deficiency) that \$7,229.86 or any part thereof or any other sum or amount whatsoever is taxable to the petitioner as income of said Gaylord Trust, and in determining that any income of said Gaylord Trust in or for the calendar year 1938 is taxable to the petitioner, and in determining that the deduction of \$15,899.86 for amount distributable to beneficiaries or any part of said sum or amount should be disallowed, and in determining that there was or is increase in long-term capital gain in the sum of

\$2,687.29 or any increase in any capital gain in any sum or amount whatsoever, and in determining that the loss of \$5,076.11 claimed by the petitioner or any part thereof should be disallowed, and in determining that the net income of trust as adjusted was or is \$25,304.53 or any other sum or amount whatsoever in excess of \$1,641.27.

(XXXIII) The Commissioner erred in determining that the petitioner was liable for 2/7ths or any proportion or part whatsoever of the income of said Gaylord Trust for, in or with respect to the calendar year 1938, or that 2/7ths or any proportion whatsoever of the income of said trust was or is the portion of the petitioner or that the petitioner was or is liable for \$7,229.86 net income of said trust or any part thereof or any income from said trust.

(XXXIV) The Commissioner erred in determining or holding (see said Explanation Of Adjustments in said notice of deficiency) that no deductible loss was sustained by [109] reason of the demolition of the building in Santa Monica, California, referred to in the return of income of said trust for the calendar year 1938 and referred to in said notice of deficiency and that no deductible loss in the sum of \$5,076.11 was sustained by said trust by reason of the demolition of said building in said year.

(XXXV) The Commissioner erred in determining (see said Explanation Of Adjustments in said notice of deficiency) that the amount of \$5,076.11 deducted in the petitioner's return of her income for the calendar year 1938 as representing her proportionate share of loss sustained in that year by

reason of the voluntary demolition of a building in Santa Monica, California, should be disallowed.

(XXXVI) The Commissioner erred in determining (see Computation Of Tax Taxable Year Ended December 31, 1938, in said notice of deficiency) that there was or is net income adjusted or otherwise in the sum of \$903.11 or any other sum or amount whatsoever or that there was or is a balance (surtax net income) in the sum of \$903.11 or any sum or amount whatsoever or that there was or is net income subject to normal tax in the sum of \$812.80 or any other sum or amount whatsoever.

(XXXVII) The Commissioner erred in determining (see said Computation Of Tax in said notice of deficiency) that there was or is normal tax at 4% on \$812.80 or on any other sum or amount whatsoever or normal tax in the sum of \$32.51 or any other sum or amount whatsoever or correct or other or any income tax liability in the sum of \$32.51 or in any [110] other sum or amount whatsoever or any deficiency of income tax in the amount of \$32.51 or any other sum or amount whatsoever.

(XXXVIII) The Commissioner erred in determining (see Adjustments To Net Income Taxable Year Ended December 31, 1939, in said notice of deficiency) that there was or is additional income and unallowable deductions or additional income or any unallowable deductions or deduction in the sum of \$10,780.59 or any sum or amount whatsoever in excess of \$835.78 or that there was or is income from trust taxable to the petitioner of \$7,201.17 or any

other sum or amount whatsoever or any income from any trust whatsoever taxable to the petitioner or that there was or is long-term capital gain of \$1,343.64 or any other sum or amount whatsoever, or that storm loss of \$1,400.00 or any part thereof should be disallowed, or that there was or is net income adjusted or otherwise of \$26,492.30 or any other sum or amount whatsoever in excess of \$16,547.49.

(XXXIX) The Commissioner erred in determining (see Explanation Of Adjustments for taxable year ended December 31, 1939, in said notice of deficiency) that \$7,201.17 of the income of said Gaylord Trust or any part of said sum or of any income of said trust was or is taxable to the petitioner, and in determining that deduction of \$22,465.39 for amount distributable to beneficiaries or any part of said sum should be disallowed, and in determining that there was or is increase in long-term capital gain in amount of \$1,074.92 or any other sum or amount whatsoever or any in- [111] crease in any long-term capital gain whatsoever, and in determining that the net income of trust as adjusted was or is the sum of \$25,204.12 or any other sum or amount whatsoever in excess of \$1,663.81.

(XL) The Commissioner erred in determining (see said Explanation Of Adjustments in said notice of deficiency) that 2/7ths or any part or portion of the net or any income of said Gaylord Trust was or is taxable to the petitioner and in determining that \$7,201.17 or any part thereof was or is taxable to the petitioner.

(XLI) The Commissioner erred in determining (see said Explanation Of Adjustments in said notice of deficiency) that the deduction of \$2,650.00 taken and claimed by the petitioner in her return as representing her one-half of a loss of \$5,300.00 which resulted from destruction by storm of ornamental trees on residence property owned by the petitioner and her husband George S. Gaylord should be disallowed and in allowing only \$1,250.00 of said deduction of \$2,650.00 so taken and claimed by the petitioner.

(XLII) The Commissioner erred in determining (see Computation Of Tax Taxable Year Ended December 31, 1939, in said notice of deficiency) that net income adjusted or otherwise was or is \$26,492.30 or any other sum or amount whatsoever in excess of \$16,547.49, and in determining that there was or is balance (surtax net income) of \$26,492.30 or any other sum or amount whatsoever in excess of \$16,547.49, and in determining that net income to normal tax was or [112] is \$26,192.30 or any other sum or amount whatsoever in excess of \$16,247.49.

(XLIII) The Commissioner erred in determining (see said Computation Of Tax in said notice of deficiency) that there was or is normal tax at 4% on \$26,192.30 or on any other sum or amount whatsoever in excess of \$16,247.49 or that there was or is normal tax of \$1,047.69 or any other sum or amount whatsoever in excess of \$649.90 or that there was or is surtax on \$26,492.30 or on any other sum or amount whatsoever in excess of \$16,547.49 or that

there was or is surtax of \$2,333.54 or surtax in any other sum or amount whatsoever in excess of \$732.-62 or that there was or is correct or other or any income tax liability in the sum of \$3,381.23 or any other sum or amount whatsoever in excess of \$1,-382.52 or that there was or is any deficiency of income tax in the sum of \$1,998.71 or any other sum or amount whatsoever.

5. The facts upon which the petitioner relies as the basis of this proceeding are as follows:

(a) The trust mentioned and referred to in said notice of deficiency and which is sometimes described in said notice as the Gaylord Trust was and is a trust originally created and provided for in that certain declaration of trust dated the 7th day of November, 1935, wherein said George S. Gaylord and his said wife, the petitioner, Gertrude H. Gaylord are named and referred to as trustees, which said declaration of trust was recorded September 28, 1937, in the office of the County Recorder of Los Angeles County, California, in Book 15288 at [113] Page 94 of Official Records of Said County. Said declaration of trust was also filed for record in the office of the Clerk of the County Court, Cameron County, Texas, on the 29th day of January, 1938, and recorded February 1, 1938, in Deed Record of said county, Volume 277 on pages 593-9, and was also filed for record in the office of the Clerk, County Court, Hidalgo County, Texas, March 18, 1938, and recorded March 24, 1938, in Volume X, pages 594-600, of the Miscellaneous Records of said County, and was also filed for record in the office of the

County Clerk, Potter County, Texas, June 22, 1938, and recorded June 23, 1938, in Deed Records of said county in Volume 282 on page 106, and was also filed for record in the office of the County Clerk, Jim Wells County, Texas, December 16, 1938, and recorded December 29, 1938, in Deed Records of said county in Volume 64 on pages 348-355. Attached hereto, marked Exhibit B, and hereby referred to and made a part hereof is a full and true copy of said declaration of trust and reference is hereby made to said declaration of trust for all particulars thereof and of the trust therein provided for. Said trust and declaration thereof are and have always been absolutely irrevocable and unchangeable by said George S. Gaylord and Gertrude H. Gaylord or by either of them or by any other person or party whomsoever, and there is not and has never been any power or revocation, change or modification of said trust or of any provision thereof reserved in any manner either in said declaration of trust or otherwise to said George S. Gaylord and Gertrude H. Gaylord or either of them or to any other person or party whomsoever. In con- [114] nection with the creation of said trust and as a part of the same transaction said George S. Gaylord made and personally signed and executed under his oath a gift tax return for the calendar year 1935, on Form 709 Treasury Department Internal Revenue Service, which said return was so verified by him under date of February 3, 1936, before Alice F. Jackson, a notary public in and for the County of Los Angeles, State of California, and filed in the

office of the United States Collector of Internal Revenue at Los Angeles, California, on March 10, 1936. Said return included and covered said George S. Gaylord's contribution to said trust of the 5000 shares of the common capital stock of Marathon Paper Mills Company mentioned in said declaration of trust. In said return said George S. Gaylord declared that the gift represented by said contribution was made "By the creation of an irrevocable trust for the benefit of another" and there was at the same time filed in said office with said return and as a part thereof a copy of said declaration of trust. George S. Gaylord upon so filing his said return, with said copy of said declaration of trust, with said Collector of Internal Revenue, and at the same time the return was so filed, paid a gift tax in the amount of \$2,531.27 on gifts referred to in said return and which included the said George S. Gaylord's gift of said 5000 shares to said trust. Thereafter and under date of December 28, 1936, the said George S. Gaylord paid to said Collector an additional gift tax of \$90.05 assessed on said return. Attached hereto, marked Exhibit D, and hereby referred to and made a part hereof is a copy of said gift tax return. [115] Similarly in connection with the creation of said trust and as a part of the same transaction said Gertrude H. Gaylord made and personally signed and executed under her oath a gift tax return for the calendar year 1935 on Form 709 Treasury Department Internal Revenue Service, which said return was so verified by her under

date of September 3, 1936, before Alice F. Jackson, a notary public in and for the County of Los Angeles, State of California, and filed in the office of said Collector on March 10, 1936. Said return included and covered said Gertrude H. Gaylord's contribution to said trust of 2000 shares of the common capital stock of Marathon Paper Mills Company mentioned in said declaration of trust. In said return said Gertrude H. Gaylord similarly declared that the gift represented by said contribution was made "By the creation of an irrevocable trust for the benefit of another", and there was at the same time filed in said office with said return and as a part thereof a copy of said declaration of trust. Attached hereto, marked Exhibit E, and hereby referred to and made a part hereof is a copy of said gift tax return of said Gertrude H. Gaylord. The only trust to which said gift tax returns could or did refer was said trust so originally created by the hereinbefore mentioned declaration of trust. Long before any question, issue or controversy was raised by any tax authority respecting said trust said George S. Gaylord and the petitioner, said Gertrude H. Gaylord, his wife, upon advice of counsel and out of an abundance of caution, signed and executed a certain Declaration Being A Part Of A Certain Declara- [116] tion Of Trust Dated November 7, 1935, which was dated November 7, 1935, and was acknowledged and sworn to by said George S. Gaylord and Gertrude H. Gaylord under date of March 27, 1940, before J. C. Humphreys, a notary public in and for the County of Los Angeles

in the State of California. Said Declaration Being A Part Of A Certain Declaration Of Trust Dated November 7, 1935, was recorded in the office of the County Recorder of Los Angeles County, California, on March 28, 1940, in Book 17245 at Page 350 of Official Records of said county. Attached hereto, marked Exhibit C, and hereby referred to and made a part hereof is a full and true copy of said Declaration Being A Part Of A Certain Declaration Of Trust Dated November 7, 1935. Said trust was created under and pursuant to a mutual understanding and agreement had between said George S. Gaylord and Gertrude H. Gaylord, his wife, prior to the execution of the above mentioned declaration of trust dated the 7th day of November, 1935, in and by which understanding and agreement it was understood and agreed by and between said George S. Gaylord and Gertrude H. Gaylord that if said George S. Gaylord would contribute to an irrevocable trust to be created and provided for the uses and purposes and upon the terms and conditions set forth in said declaration of trust said 5000 shares of the capital stock of Marathon Paper Mills Company owned by him as his separate property, such shares to be a part of the trust estate to be provided for in said trust, said Gertrude H. Gaylord would contribute to such trust as a part of such trust estate in trust for the same uses and purposes and upon [117] the same terms and conditions the above mentioned 2000 shares of the common capital stock of Marathon Paper Mills Company owned by her as her sepa-

rate property and that if she would make such contribution of said 2000 shares so owned by her said George S. Gaylord would make such contribution of said 5000 shares so owned by him and that said trust was to be absolutely and at all times and under all circumstances irrevocable by any person or party whomsoever or whatsoever. Under and pursuant to said mutual understanding and agreement between said George S. Gaylord and Gertrude H. Gaylord said declaration of trust was executed by them and he contributed to said trust said 5000 shares and she contributed to said trust said 2000 shares. There was a good and valuable consideration passing from her to him for his execution of said declaration of trust and his contribution of said stock to said trust and his joining in said trust. There was likewise a good and valuable consideration passing from him to her for her execution of said declaration of trust and her contribution of her said stock to said trust and her joining in said trust. Said trust was not created without a valuable consideration passing to each of the trustors therein named. At the time said George S. Gaylord and Gertrude H. Gaylord executed said declaration of trust and at all times during the years 1936, 1937, 1938 and 1939 they had no knowledge of any law which would make or render or purported to make or render said trust in any manner or at any time revocable or the income thereof or any part thereof taxable to the trustors or either of them. At the time of the execution in [118] the year 1935 of said declaration of trust and prior

thereto and at all times since said execution of said declaration of trust it has always been the unaltered and firm mutual desire, understanding, agreement, assumption and belief of said trustors and trustees George S. Gaylord and Gertrude H. Gaylord that said trust was and is absolutely irrevocable by them or by either of them or by any person or party whomsoever or whatsoever at any time or in any manner whatsoever. At all times since said execution in 1935 of said declaration of trust said George S. Gaylord and Gertrude H. Gaylord have acted on said agreement, understanding, assumption and belief that said trust was so absolutely irrevocable. No question has ever been raised nor can legitimately be raised now as to the ever unchanged and firm intent at all times of said George S. Gaylord and Gertrude H. Gaylord to create pursuant to their mutual understanding and agreement an irrevocable trust on the terms, conditions and provisions set forth in said declaration of trust. The intent of said George S. Gaylord and Gertrude H. Gaylord that the trust created and provided for in said declaration of trust should forever be irrevocable preceded the creation of said trust, was present when said trust was formed and has at all times remained the same and unchanged.

(b) None of the income of or from the trust hereinbefore mentioned and referred to, either for any of the years 1936, 1937, 1938 or 1939, or otherwise, is or ever has been income of said George S. Gaylord or said Gertrude H. Gaylord, his wife, in his or

her individual or personal capacity, or [119] income in which he or she has or ever had any beneficial right, title, interest or estate whatsoever. The whole of the net income of and from said trust in or for said years 1936, 1937, 1938 and 1939 was the property of and belonged to and was taxable to Margaret Gaylord Ruppel and Gertrude Gaylord Bruce, the first named beneficiaries in and under said trust, in equal shares. There is no law or lawful or valid regulation whatsoever under or pursuant to which any of the aforementioned income can be considered or treated as income of said George S. Gaylord and said Gertrude H. Gaylord, his wife, or either of them, in their respective personal or individual capacities, or under or pursuant to which they are or either of them is or they or either of them can be made liable or charged for or assessed with any income tax on any of said income. Under the law all of said income for income tax purposes belongs to and is chargeable to the two first named beneficiaries of said trust, the above named Margaret Gaylord Ruppel and Gertrude Gaylord Bruce, in equal shares, and not to said George S. Gaylord and said Gertrude H. Gaylord, his wife, or to either of them. There is no provision for any accumulation of any of the income of said trust but all of the income of said trust must be paid, distributed or applied to or for the beneficiaries of said trust, either monthly, quarterly or semi-annually, but in any event annually. Neither said George S. Gaylord nor his wife Gertrude H.

Gaylord can at any time use or enjoy or be entitled to any of said income or participate therein. [120]

(c) Said two first named beneficiaries of said trust, Margaret Gaylord Ruppel and Gertrude Gaylord Bruce (named in said declaration of trust as Gertrude Gaylord), are the daughters of said George S. Gaylord and said Gertrude H. Gaylord, his wife. Said Margaret Gaylord Ruppel was born on November 10, 1904, and said Gertrude Gaylord Bruce was born May 31, 1916. Each of said beneficiaries has lawful issue now living. Said Margaret Gaylord Ruppel has two children now living, to-wit, a daughter Barbara Brunker, who is over the age of sixteen (16) years, she having been born October 14, 1925, and a son Robert Henry Brunker, who is over the age of thirteen (13) years, he having been born June 3, 1928. Said Gertrude Gaylord Bruce has one child living, to-wit, a daughter Ann Bruce, who is over the age of three (3) years, she having been born April 20, 1938. Said Margaret Gaylord Ruppel and Gertrude Gaylord Bruce now have and have had at all times since the inception of said trust in 1935 and each of them now has and at all said times has had present, existing and equal beneficial interests in said trust and the estate thereof and are the full owners of said trust, subject only in the event of non-survival to May 31, 1946 (when said Gertrude Gaylord Bruce will attain the age of thirty (30) years and the trust then in any case terminate) to being divested in favor of issue. Said Barbara Brunker, Robert

Henry Brunker and Ann Bruce are such issue now living.

(d) Each of said beneficiaries of said trust, Margaret Gaylord Ruppel and Gertrude Gaylord Bruce, rendered and filed [121] with said Collector of Internal Revenue, at Los Angeles, California, her individual income tax returns of her income for said years 1936, 1937, 1938 and 1939, respectively, in which returns she included all of her one-half of the net income of said trust for the appropriate year, and paid her individual income taxes on said income.

(e) Said declaration of trust shows on its face that it was intended to be operative under laws of jurisdictions other than California. Upon information and belief the petitioner alleges that under the law of every jurisdiction in the United States outside of the State of California the trust set forth in said declaration of trust in the form in which the same is set forth was at all times since the inception of said trust and is absolutely irrevocable. Said trust is also irrevocable under the laws of the State of California.

(f) During the year 1938 the trustees of said trust invested over \$94,000.00 of the principal or corpus of said trust in, and by way of purchase of, certain real property in the State of Texas for said trust and as a part of the estate thereof, which said real property ever since has been and is now owned and held by said George S. Gaylord and Gertrude H. Gaylord as trustees of said trust for the benefit of said trust and the beneficiaries thereof. In

connection with such investments and purchases and the operations of said trustees on behalf of said trust in the State of Texas said declaration of trust was recorded in the year 1938 in the offices of the clerks of the county courts of [122] Cameron, Hidalgo, Potter and Jim Wells Counties, Texas, respectively, as hereinbefore set forth. Included in the net income of and from said trust for the years 1938 and 1939 referred to in said notice of deficiency were and are the following net rents from said real property in said State of Texas, to-wit: In and for said year 1938 \$3,859.95 and in and for said year 1939 \$6,370.67. Upon information and belief the petitioner alleges that under the law of Texas said trust always was and is irrevocable and all of said income was and is wholly the property of said beneficiaries Margaret Gaylord Ruppel and Gertrude Gaylord Bruce, in equal shares, and that neither said George S. Gaylord nor his said wife Gertrude Gaylord is entitled to have or enjoy any of said income.

(g) All of the 7000 shares of the capital stock of Marathon Paper Mills Company, a Wisconsin corporation, mentioned in said declaration of trust were sold and delivered by said trustees in Chicago, Illinois, and/or in the State of New York. Upon information and belief the petitioner alleges that said trust always was and is irrevocable in the States of Illinois and New York.

(h) All of the cash funds of said trust in the years 1936, 1937 and 1938 were kept on deposit in

the names of said George S. Gaylord and Gertrude H. Gaylord, as trustees under Declaration of Trust dated November 7, 1935, with Harris Trust and Savings Bank in Chicago, Illinois, and in the years 1939, 1940 and 1941 all of the bank accounts of said trustees, as trustees of said trust, were kept with said Harris Trust and [123] Savings Bank in Chicago, Illinois, and with Bankers Trust Company, of 16 Wall Street in the City of New York, in the State of New York.

(i) Said 7000 shares of the capital stock of Marathon Paper Mills Company were acquired with some bonds in a non-taxable exchange October 31, 1927, in which exchange said George S. Gaylord exchanged 3357 shares of the stock of Menasha Printing and Carton Company (a corporation merged or consolidated with Marathon Paper Mills Company October 31, 1927) for 6728 shares of common stock and \$1,038,000.00 (face value) in bonds of Marathon Paper Mills Company. In determining the basis for said 3357 shares of Menasha Printing and Carton Company stock used as the basis for the stock and bonds so acquired in Marathon Paper Mills Company the Commissioner erred by disregarding two important transactions, hereinafter mentioned, affecting the basis of this stock. Commencing in 1928 said George S. Gaylord sold some of such bonds so acquired, using a basis of \$251.99 for each bond in reporting such sales transactions in his subsequent returns of income for each of the years in which such sales were

made, that is, 1928, 1929, 1930, 1931, 1932, 1933, 1934 and 1935. This basis was accepted by the Internal Revenue Service upon the examination of said George S. Gaylord's income tax return of his income for the year 1928, in which year the first sales of such bonds were made by him, and said basis was used thereafter by him in all the aforementioned subsequent returns in reporting sales of such bonds. The [124] basis for the stock so acquired with such bonds was also determined and shown in the computation of the basis for such bonds and has been used by said George S. Gaylord in all income tax returns reporting sales of that stock, that is, in all income tax returns of income for the years 1935 to 1939, inclusive, the last of such stock having been sold in the last mentioned year, that is, in 1939. Attached hereto, marked Exhibit F, and hereby referred to and made a part hereof is a copy (substantially) of the schedule which was attached to all of said income tax returns and used in connection therewith and referred to therein, in which the aforesaid bases were set forth. These bases so used by said George S. Gaylord in all income tax returns made by him and also the bases determined by the Internal Revenue Service for the Marathon Paper Mills Company stock are in error, principally for the reason that two important taxable exchanges were not considered by either said George S. Gaylord or the Internal Revenue Service in arriving at the bases of value of such stocks and bonds, said George S. Gaylord having failed to consider said

two exchanges through inadvertence. These two exchanges are as follows:

(1) On or about July 1, 1917, in the merger or consolidation of Menasha Carton Company and Menasha Printing Company to form Menasha Printing and Carton Company, said George S. Gaylord surrendered 337 shares of stock owned by him in Menasha Carton Company and gave his note for \$152,161.11 for 435 shares of the common stock and 190 [125] shares of the preferred stock of the new corporation, Menasha Printing and Carton Company. Upon completion of this consolidation or merger he did not own an interest in the new company proportionate to his interest in the merged or consolidated company prior to such merger or consolidation. The basis upon which the exchange of stock in the old corporations for stock in the new corporation was made was upon the actual value of the assets of each of the old companies at the time of the merger or consolidation. The par or stated value of the stock in the new corporation was based substantially upon the par or stated value of the stock of the old companies plus the accumulated earnings to the date of the consolidation or merger.

(2) On or about August 24, 1927, said George S. Gaylord acquired 352 shares of Menasha Printing and Carton Company from his brother C. W. Gaylord in exchange for 432 shares of stock of Robert Gaylord, Inc. Said George S. Gaylord previously had given to his brother C. W. Gaylord on or about October 5, 1925, 350 shares of stock of

Menasha Printing and Carton Company in exchange for the same 432 shares of stock in Robert Gaylord, Inc., so returned to C. W. Gaylord on or about August 24, 1927. These exchanges were taxable, although through inadvertence not considered so by said George S. Gaylord at the times involved, and the basis for the 352 shares of stock acquired by him affects the basis of the Marathon Paper Mills Company stock and its value is determined by the value placed on [126] stock of Menasha Printing and Carton Company, a party to the tax-free organization completed in October, 1927. This value is determined as follows: Said George S. Gaylord received for 3357 shares of Menasha Printing and Carton Company stock, which included the 352 shares received on or about August 24, 1927, from his brother, the following securities:

1038 5½% bonds	\$ 1,038,000.00
6728 shares common stock valued at 130.30	
per share	876,658.40
	<hr/>
	\$ 1,914,658.40
337/3357 of this value \$1,914,658.40 is \$200,762.51, the	
value of these 352 shares of stock.	

Attached hereto, marked Exhibit G, and hereby referred to and made a part hereof is a copy (substantially) of a memorandum which was submitted to the Internal Revenue Service showing the basis of the stock acquired by said George S. Gaylord in Menasha Printing and Carton Company, based on the earnings in 1917 of the Menasha Carton Com-

pany. Attached hereto, marked Exhibit H, and hereby referred to and made a part hereof, is a schedule showing the computation of the basis of Marathon Paper Mills stock based upon the data set forth in the hereinbefore referred to Exhibit F and Exhibit G.

(j) For the purpose of computing the capital gain realized in the years 1936, 1937, 1938 and 1939 from the sale of shares of the common capital stock of Marathon Paper Mills Company belonging to said trust the statutory basis for computing gain or loss on each such sale was and [127] is \$8.21 per share as stated in the income tax returns filed for said year and not \$2.83542 per share or any sum or amount less than \$8.21 per share.

(k) In March, 1938, said George S. Gaylord, in his individual and personal capacity, and the petitioner, his said wife Gertrude H. Gaylord, in her individual and personal capacity, and the hereinbefore mentioned trust by its trustees George S. Gaylord and Gertrude H. Gaylord purchased each an undivided one-third interest in business property situate in Santa Monica, California, consisting of land improved at the time of said purchase with a storerooms building then occupied by three different tenants in several tenancies. In the latter part of 1938 one of these tenants, requiring additional space, requested the owners to build an addition to the building and to do such remodeling as was necessary to meet his requirements. A contractor was engaged to give an estimate on the cost of such work and it was found that considerable ex-

penditure would have to be made to remodel the old building and the contractor suggested demolishing the old building and erecting a new building and gave said owners his estimates for this work. The latter then consulted brokers through whom the property was purchased and were informed as to the rental value of the proposed improvement and as to the prospect of obtaining new tenants if the then tenants could not be retained. It was at this time, in 1938, that the petitioner and her co-owners decided to demolish the building. [128] At the time the premises above mentioned were acquired by the petitioner and her co-owners they had no intention of demolishing the building then on said land.

Wherefore, the petitioner prays that this Board may hear this proceeding and redetermine the deficiency set forth by the Commissioner of Internal Revenue hereinbefore referred to and determine that there is no such deficiency of \$8,043.63 and that there is no deficiency in any sum or amount whatsoever in or with respect to the petitioner's income tax liability for the taxable years 1936 to 1939, in-

clusive, or any of said years, and for such other relief as may be proper in the premises.

GERTRUDE H. GAYLORD

Post Office Address: 639 Rosemont Avenue, Pasadena, California.

THOMAS A. J. DOCKWEILER

whose post office address is 1035 L. N. Van Nuys Building, 210 West Seventh Stret, Los Angeles, California.

JAMES W. BONTEMS

whose post office address is 215 West Sixth Street, Los Angeles, California.

Attorneys for said petitioner.

[129]

State of California,
County of Monterey—ss.

Gertrude H. Gaylord, being duly sworn, says that she is the petitioner above named; that she has read the foregoing petition and is familiar with the statements contained therein, and that the statements contained therein are true, except those stated to be upon information and belief, and that she believes those to be true.

GERTRUDE H. GAYLORD

Subscribed and sworn to before me this 19th day of November, 1941.

(Notarial Seal) R. McKEVER, JR.

Notary Public in and for said County and State.

My Commission Expires Sept. 22, 1942. [130]

EXHIBIT A

(Copy)

SN-IT-1

Treasury Department
Internal Revenue Service
12th Floor,
U. S. Post Office and Court House,
Los Angeles, California
Sep. 17, 1941.

Office of
Internal Revenue Agent in Charge
Los Angeles Division.
LA:IT:90D:PB

Mrs. Gertrude H. Gaylord,
639 Rosemont Avenue,
Pasadena, California.

Madam:

You are advised that the determination of your income tax liability for the taxable years 1936 to 1939, inclusive, discloses a deficiency of \$8,043.63 as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency mentioned.

Within 90 days (not counting Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with the United States Board of Tax Appeals for the redetermination of the deficiency.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward

Exhibit A—(Continued)

it to the Internal Revenue Agent in Charge, Los Angeles, California, for the attention of LA:Conf. The signing and filing of this form will expedite the closing of your returns by permitting an early assessment of the deficiency, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Respectfully,

GUY T. HELVERING,

Commissioner.

By (Signed) GEORGE D. MARTIN

Internal Revenue Agent in
Charge.

Enclosures:

Statement.

Form of waiver.

PB:fpc [131]

Exhibit A—(Continued)

STATEMENT

LA:IT:90D:PB

Mrs. Gertrude H. Gaylord,
639 Rosemont Avenue,
Pasadena, California.

Tax Liability for the Taxable Years Ended
December 31, 1936
December 31, 1937,
December 31, 1938,
and
December 31, 1939.

Income Tax

Year	Liability	Assessed	Deficiency
1936	\$ 1,133.38	\$ 45.98	\$ 1,087.40
1937	14,627.77	9,702.76	4,925.01
1938	32.51	0.00	32.51
1939	3,381.23	1,382.52	1,998.71
Totals	\$19,174.89	\$11,131.26	\$8,043.63

In making this determination of your income tax liability, careful consideration has been given to the report of examination dated December 21, 1940, to your protests dated January 27 and April 21, 1941, and to the statements made at the conferences held on March 31, May 1 and July 18, 1941.

The net income as adjusted for the taxable years 1936, 1937, 1938 and 1939, of the trust created by declaration of trust executed November 7, 1935 by George S. Gaylord and yourself in which you and your husband are named as grantors and trustees and your two daughters, Margaret Gaylord Ruppel

Exhibit A—(Continued)

and Gertrude Gaylord are named as beneficiaries, is held to constitute income to the grantors under the provisions of section 22(a) and/or section 166 of the Revenue Acts of 1936 and 1938 and/or the same sections of the Internal Revenue Code. Inasmuch as two-sevenths of the total value of the property transferred to the trust was contributed by you, that proportion of the net income of the trust as adjusted for each of the years 1936 to 1939, inclusive, has been included in the recomputation of your taxable net income for those years. [132]

For the purpose of computing the capital gains realized by you and the Gaylord Trust in the years 1936, 1937, 1938 and 1939 from the sale of shares of the common capital stock of Marathon Paper Mills Company, the statutory basis for computing gain or loss on each such sale has been determined to be \$2.83542 per share, instead of \$8.21 per share as stated in the income tax returns filed. For the purpose of that determination the fair market value of 435 shares of common stock of Menasha Printing and Carton Company received by George S. Gaylord on or about August 15, 1917 in exchange for stock of Menasha Carton Company is held to be \$100.00 per share. It is held further that George S. Gaylord's basis for gain or loss upon the sale or other disposition of the bonds and stock of Marathon Paper Mills Company received by him on or about October 31, 1927 in exchange for 3357 shares of the common stock of Menasha Printing and Carton Company, is the same as his basis in the shares

Exhibit A—(Continued)

given in that exchange, and that such basis should be apportioned 53.967% to the bonds and 46.033% to the stock received in that exchange. Your basis for gain or loss upon the sale or other disposition of the 4,000 shares of the capital stock of Marathon Paper Mills Company received by you as a gift from George S. Gaylord on or about February 9, 1932 is the same as that of the donor, as provided in section 113(a)(2) of the Internal Revenue Acts of 1936 and 1938 and of the Internal Revenue Code.

A copy of this letter and statement has been mailed to your representative, Mr. James W. Bon-tems, 215 West 6th Street, Los Angeles, California, in accordance with the authority contained in the power of attorney executed by you and on file with the Bureau. [133]

ADJUSTMENTS TO NET INCOME

Taxable Year Ended December 31, 1936

Net income as disclosed by return.....	\$ 1,277.08
Additional income and unallowable deduction:	
(a) Income from trust	\$12,516.30
(b) Depreciation disallowed	84.78 12,601.08
<hr/>	
Net income adjusted	13,878.16

Explanation of Adjustments

(a) The portion of the income of the Gaylord Trust held to be taxable to you, as stated above, has been determined to be \$12,516.30, as follows:

Exhibit A—(Continued)

Net income reported in trust return, form 1041	\$37,057.53
Addition to income:	
Increase in capital gain	6,749.50
Net income of trust as adjusted	\$43,807.03
Your portion, 2/7	\$12,516.30

The increase in capital gain in the amount of \$6,749.50 is due to the above noted decrease in basis of Marathon Paper Mills Company common stock from \$8.21 per share to \$2.83542 per share, resulting in a difference in realized gain, when applied to the 4,000 shares of the mentioned stock sold by the trust, of \$21,498.32, of which 30%, or \$6,449.50, is taken into account under the provisions of section 117(a) of the Revenue Act of 1936; the increase is due further to the correction of a mathematical error of \$300.00 made in the trust return in applying the 30% limitation to realized gain. [134]

(b) The amount of depreciation allowable on brick veneer house is determined to be \$815.22, representing depreciation at the rate of 2½% per annum on \$32,608.80. Since you claimed depreciation on this property in the amount of \$900.00, there is disallowed the amount of \$84.78.

COMPUTATION OF TAX

Taxable Year Ended December 31, 1936

Net income adjusted	\$13,878.16
Less: Personal exemption (claimed by husband)	None
Balance (surtax net income)	\$13,878.16
Less: Earned income credit	300.00
Net income subject to normal tax	\$13,578.16

Exhibit A—(Continued)

Normal tax at 4% on \$13,578.16.....	\$ 543.13
Surtax on \$13,878.16.....	590.25
<hr/>	
Correct income tax liability	\$ 1,133.38
Income tax assessed:	
Original, account No. 801666	45.98
<hr/>	
Deficiency of income tax	\$ 1,087.40

ADJUSTMENTS TO NET INCOME

Taxable Year Ended December 31, 1937

Net income as disclosed by return.....	\$50,042.18
Additional income and unallowable deduction:	
(a) Income from trust	\$ 9,449.31
(b) Capital gain	3,385.99
(c) Dividends	200.00
(d) Depreciation disallowed	84.78
<hr/>	
Net income adjusted	\$63,162.26

[135]

Explanation of Adjustments

(a) The portion of the income of the Gaylord Trust held to be taxable to you, as stated above, has been determined to be \$9,449.31, as follows:

Net income reported in trust return, form 1041.....	\$30,495.78
Addition to income:	
Increase in capital gain	2,576.80
<hr/>	
Net income of trust as adjusted.....	\$33,072.58
Your portion, 2/7	\$ 9,449.31

The increase in capital gain in the amount of \$2,576.80 is due to the above noted decrease in basis of Marathon Paper Mills Company common stock from \$8.21 per share to \$2.83542 per share, resulting in a difference in realized gain, when applied to

Exhibit A—(Continued)

the 1,600 shares of the mentioned stock sold by the trust, of \$8,599.33, of which 30%, or \$2,579.80, is taken into account under the provisions of section 117(a) of the Revenue Act of 1936, and due further to the correction of a mathematical error of \$3.00 made in the trust return.

(b) This increase in the amount of capital gain reported in your return is due to the above noted decrease in basis of Marathon Paper Mills Company common stock from \$8.21 per share to \$2.83542 per share, resulting in a difference in realized gain, when applied to the 2,100 shares of the mentioned stock sold by you, of \$11,286.62, of which 30%, or \$3,385.99, is taken into account under the provisions of section 117(a) of the Revenue Act of 1936. [136]

(c) The following dividends received by you in the taxable year are not included in your return:

Barnsdall Oil Company	\$100.00
Cutler Hammer, Inc. (\$200.00 received, \$100.00 included in your return)	100.00
Total	\$200.00

(d) This disallowance of depreciation is explained under adjustment (b) for the year 1936.

COMPUTATION OF TAX

Taxable Year Ended December 31, 1937

Net income adjusted	\$63,162.26
Less: Personal exemption (claimed by husband)	None
Balance (surtax net income)	\$63,162.26
Less: Earned income credit	300.00
Net income subject to normal tax	\$62,862.26

Exhibit A—(Continued)

Normal tax at 4% on \$62,862.26.....	\$ 2,514.49
Surtax on \$63,162.26.....	12,113.28
Correct income tax liability	\$14,627.77
Income tax assessed:	
Original, account No. 809620	9,702.76
Deficiency of income tax	\$ 4,925.01

[137]

ADJUSTMENTS TO NET INCOME

Taxable Year Ended December 31, 1938

Net income (loss) as disclosed by return.....	(\$ 7,737.12)
Additional income and unallowable deductions:	
(a) Income from trust	\$ 7,229.86
(b) Net long-term capital loss adjusted	6,007.59
(c) Depreciation disallowed	466.35
(d) Loss disallowed	5,076.11
	18,779.91
Total	\$11,042.79
Additional deductions:	
(e) Expenses, rental property	\$ 130.88
(f) Non-capital loss	10,008.80
	10,139.68
Net income adjusted	\$ 903.11

Explanation of Adjustments

(a) The portion of the income of the Gaylord Trust held to be taxable to you, as stated above, has been determined to be \$7,229.86, as follows:

Net income reported in trust return, form 1041.....	\$ 0.00
Additions to income:	
1. Deduction for amount distributable to beneficiaries disallowed.....	\$15,899.86
2. Increase in long-term capital gain....	2,687.29
3. Adjustment of net income from rents	1,641.27

Exhibit A—(Continued)

4. Loss disallowed	5,076.11	25,304.53
Net income of trust as adjusted		\$25,304.35
Your portion, 2/7		\$ 7,229.86

[138]

1. For the purpose of determining the amount of income derived by the trust the deduction claimed for the amount distributable to beneficiaries is disallowed.

2. The increase in long-term capital gain in the amount of \$2,687.29 is due to the above noted decrease in basis of Marathon Paper Mills Company common stock from \$8.21 per share to \$2.83542 per share, resulting in a difference in realized gain, when applied to the 1,000 shares of the mentioned stock sold by the trust, of \$5,374.58, of which 50%, or \$2,687.29, is taken into account, under the provisions of section 117(b) of the Revenue Act of 1938.

3. This adjustment results from the determination of rental net income in the amount of \$6,282.91, whereas the amount reported in the trust return is \$4,641.64, a difference of \$1,641.27. The amount of \$6,282.91 has been determined as follows:

Property	Rent Received	Depreciation	Other Expense	Net Profit
Alhambra	\$ 697.41	\$ 64.90	\$ 35.10	\$ 597.41
Amarillo	965.01	88.89	64.75	811.37
McAllen	1,893.54	181.82	127.26	1,584.46
Santa Monica	1,856.58	—	31.03	1,825.55
Harlingen	1,764.12	300.00	—	1,464.12
Total	\$7,176.66	\$ 635.61	\$ 258.14	\$6,282.91

Exhibit A—(Continued)

4. The amount of \$5,076.11 deducted in the return filed by the trust as representing its proportionate share of loss sustained in the year 1938 by reason of the voluntary demolition of a building in Santa Monica, California, is disallowed. It appears that the building in question was situated on land acquired in March, 1938 one-third each in the names of George S. Gaylord, Gertrude H. Gaylord and the Gaylord Trust and that it was razed early in January 1939 to make way for the erection of a new building. It is held that no deductible loss was sustained by reason of the demolition of the building in question. See Article 23(e)-2 of Regulations 101. [139]

(b) This decrease in the amount of net long-term capital loss reported in your return is due to the following adjustments:

	Gain (Loss) Reported	Gain (Loss) Corrected	Adjustment
1. Marathon Paper Mills			
Company common stock	\$ 7,182.00	\$8,256.92	\$1,074.92
2. House and lot	(4,756.30)	176.37	4,932.67
	<hr/>	<hr/>	<hr/>
Totals	\$ 2,425.70	\$8,433.29	\$6,007.59

1. This adjustment in the amount of long-term capital gain is due to the above noted decrease in basis of Marathon Paper Mills Company common stock from \$8.21 per share to \$2.83542 per share, resulting in a difference in realized gain, when applied to the 400 shares of the mentioned stock sold by you, of \$2,149.83, of which 50%, or \$1,074.92, is taken into account under the provisions of section 117(b) of the Revenue Act of 1938.

Exhibit A—(Continued)

2. This adjustment is due to a reclassification of loss as between capital and non-capital gain or loss. In your return you reported a loss sustained of \$9,512.60 from the sale of a house and lot, of which you took into account 50%, or \$4,756.30 as long-term capital loss. It is determined that the amount of depreciation on the house previously allowed or allowable is \$5,706.54, representing depreciation in the amount of \$815.22 per annum (as stated under adjustment (b) for the year 1936) for 7 years. In your return you show depreciation previously allowed or allowable on the house in the amount of \$5,850.00, a difference of \$143.46. This difference of \$143.46 results in an increase in the amount of loss sustained from \$9,512.60 to \$9,656.06. Since under the provisions of section 117 of the Revenue Act of 1938 the land is a capital asset, the gain or loss from the sale of which is taken into account to the extent of only 50%, and the house is a non-capital asset, the gain or loss from the sale of which is taken into account to the extent of 100%, the revised amount of loss is apportioned, and taken into account, as follows: [140]

	Amount of Gain (Loss)	
	Realized	Taken into Account
From sale of land _____	\$ 352.74	\$ 176.37
From sale of house _____	(10,008.80)	(10,008.80)
Total realized _____	(9,656.06)	

In this adjustment (b) the above amount of gain, \$176.37, is substituted for the \$4,756.30 loss claimed

Exhibit A—(Continued)

in your return, and under adjustment (f) there is allowed the loss of \$10,008.80.

(c) This disallowance of depreciation is due to the following adjustments:

Property	Depreciation		
	Claimed	Allowed	Disallowed
1. Brick and tile—			
Harlingen	\$ 600.00	\$ 300.00	\$ 300.00
2. Brick—Amarillo	200.00	88.89	111.11
3. Stucco and steel—			
Alhambra	77.75	64.90	12.85
4. House sold in			
1938—Neenah	450.00	407.61	42.39
Totals	\$1,327.75	\$ 861.40	\$ 466.35

1. The allowable depreciation is determined upon the basis of \$12,000.00 cost and depreciation at the rate of $2\frac{1}{2}\%$ per annum.

2. This property was acquired during the taxable year at a cost subject to depreciation of \$3,200.00, having an estimated remaining life of 18 years. Depreciation is allowable for 6 months of this taxable year. [141]

3. This property was acquired during the taxable year at a cost subject to depreciation of \$7,787.69, having an estimated remaining life of 30 years. Depreciation is allowable for 3 months of this taxable year.

4. Depreciation is allowable for 6 months of this taxable year on this property, upon the basis stated in adjustment (b) for the year 1936 (one-half of \$815.22).

Exhibit A—(Continued)

(d) The amount of \$5,076.11 deducted in your return as representing your proportionate share of loss sustained in the year 1938 by reason of the voluntary demolition of a building in Santa Monica, California, is disallowed for the reason stated under item 4 of adjustment (a) for this year.

(e) Expenses deductible against rental income in the amount of \$130.88 are not claimed in your return.

(f) This adjustment is explained under adjustment (b) for this year.

COMPUTATION OF TAX

Taxable Year Ended December 31, 1938

Net income adjusted	\$ 903.11
Less: Personal exemption (claimed by husband).....	None
<hr/>	
Balance (surtax net income).....	\$ 903.11
Less: Earned income credit (10% of \$903.11).....	90.31
<hr/>	
Net income subject to normal tax	\$ 812.80
Normal tax at 4% on \$812.80.....	\$ 32.51
Surtax on \$903.11.....	0.00
<hr/>	
Correct income tax liability	\$ 32.51
Income tax assessed:	
Original, account No. 656040	None
<hr/>	
Deficiency of income tax	\$ 32.51

[142]

Exhibit A—(Continued)

ADJUSTMENTS TO NET INCOME

Taxable Year Ended December 31, 1939

Net income as disclosed by return	\$15,711.71
Additional income and unallowable deductions:	
(a) Income from trust	\$7,201.17
(b) Long-term capital gain	1,343.64
(c) Depreciation disallowed	835.78
(d) Storm loss disallowed	1,400.00
	<hr/>
Net income adjusted	\$26,492.30

Explanation of Adjustments

(a) The portion of the income of the Gaylord Trust held to be taxable to you, as stated above, has been determined to be \$7,201.17, as follows:

Net income reported in trust return, form 1041.....	\$	0.00
Additions to income:		
1. Deduction for amount distributable to beneficiaries	\$22,465.39	
2. Increase in long-term capital gain....	1,074.92	
3. Depreciation disallowed	1,663.81	25,204.12
	<hr/>	<hr/>
Net income of trust as adjusted.....	\$25,204.12	
Your portion, 2/7	\$	7,201.17

1. For the purpose of determining the amount of income derived by the trust the deduction claimed for amount distributable to beneficiaries is disallowed. [143]

2. The increase in long-term capital gain in the amount of \$1,074.92 is due to the above noted decrease in the basis of Marathon Paper Mills Company common stock from \$8.21 per share to \$2.83542 per share, resulting in a difference in realized gain,

Exhibit A—(Continued)

when applied to the 400 shares of the mentioned stock sold by the trust, of \$2,149.83, of which 50%, or \$1,074.92, is taken into account under the provisions of section 117(b) of the Internal Revenue Code.

3. This adjustment results from the determination of allowable depreciation in the amount of \$2,001.29, whereas the amount claimed in the trust return is \$3,665.10, a difference of \$1,663.81. The amount of \$2,001.29 has been determined as follows:

Property	Date Acquired	Cost	Est. Rem. Life	Allowable Depreciation
Alhambra	1938	\$ 7,787.69	30	\$ 259.59
Amarillo	1938	3,200.00	18	177.77
Alice	1938	21,000.00	40	525.00
Harlingen	1937	12,000.00	40	300.00
McAllen	1938	8,000.00	22	363.64
Santa Monica	1939	11,258.60	30	375.29
Total.....				\$2,001.29

(b) This increase in the amount of long-term capital gain reported in your return is due to the above noted decrease in basis of Marathon Paper Mills Company common stock from \$8.21 per share to \$2.83542 per share, resulting in a difference in realized gain, when applied to the 500 shares of the mentioned stock sold by you, of \$2,687.29, of which 50%, or \$1,343.64, is taken into account under the provisions of section 117(b) of the Internal Revenue Code. [144]

(c) This disallowance of depreciation is due to the following adjustments:

Exhibit A—(Continued)

Property	Depreciation		
	Claimed	Allowed	Disallowed
1. Stucco and steel—			
Alhambra	\$ 385.50	\$ 259.59	\$ 125.91
2. Brick—Amarillo	400.00	177.77	222.23
3. Brick and tile—			
Harlingen	600.00	300.00	300.00
4. Stucco and steel—			
Santa Monica	562.93	375.29	187.64
Totals	\$1,948.43	\$1,112.65	\$ 835.78

1. The basis of the determination of the amount allowable is explained under item 3 of adjustment (c) for the preceding taxable year.

2. The basis of the determination of the amount allowable is explained under item 2 of adjustment (c) for the preceding taxable year.

3. The determination of the amount allowable is explained under item 1 of adjustment (c) for the preceding taxable year.

4. This property was acquired during the taxable year at a cost subject to depreciation of \$11,258.60, having an estimated remaining life of 30 years.

(d) In your return you took a deduction of \$2,650.00 as representing your one-half of a loss of \$5,300.00 claimed to have resulted from the destruction by storm of ornamental trees on the personal residence property owned by you and your husband, George S. Gaylord. It is held that the total amount of the loss as sustained did not exceed \$2,500.00 and one-half of that amount, or \$1,250.00, is allowed in lieu of the \$2,650.00 deducted in the return. [145]

Exhibit A—(Continued)

COMPUTATION OF TAX

Taxable Year Ended December 31, 1939

Net income adjusted	\$26,492.30
Less: Personal exemption (claimed by husband).....	None
Balance (surtax net income).....	\$26,492.30
Less: Earned income credit	300.00
Net income subject to normal tax.....	\$26,192.30
Normal tax at 4% on \$26,192.30.....	\$1,047.69
Surtax on \$26,492.30.....	2,333.54
Correct income tax liability	\$ 3,381.23
Income tax assessed:	
Original, account No. 852593	1,382.52
Deficiency of income tax	\$ 1,998.71
	[146]

EXHIBIT B

DECLARATION OF TRUST

Know All Men By These Presents:

That the undersigned, George S. Gaylord and Gertrude H. Gaylord, his wife, of the City of Pasadena, in the County of Los Angeles, State of California (who, though more than one, are also hereinafter called "trustee"), do hereby certify and declare that they hold and shall and will hold the following described personal property, to-wit: seven thousand (7,000) shares of the common capital stock of Marathon Paper Mills Company, a Wisconsin corporation, of the par value of Twenty-

Exhibit B—(Continued)

five Dollars (\$25.00) per share, and any and all proceeds thereof, In Trust, Nevertheless, for the following uses and purposes and upon the following terms and conditions, to-wit:

ARTICLE I

The trustee shall, during the existence of this trust, in all respects as said George S. Gaylord (who was the former owner of five thousand (5,000) of said shares) or said Gertrude H. Gaylord (who was the former owner of two thousand (2,000) of said shares) could if he or she had absolute and unlimited ownership, possession, management, control and disposition of said shares and any and all proceeds thereof, take charge of and possess, manage and control all of said shares and all principal proceeds thereof and any and all investments and reinvest- [147] ments thereof and any and all property substituted for any of said stock, proceeds, investments and/or reinvestments (all of which said stock, the principal proceeds thereof, investments and reinvestments and property are hereinafter referred to as the "trust estate") and receive and collect the rents, issues, profits, interest, dividends and income of the trust estate. The trustee shall loan, reloan, invest, reinvest, and keep invested each and every part of the trust estate in such manner as the trustee may deem advisable, and for and/or in connection with any and/or all of the aforesaid purposes and/or any purpose of this trust shall sell, exchange, rent, lease, mortgage,

Exhibit B—(Continued)

pledge, hypothecate, convey, transfer, assign and dispose of the trust estate, real, personal and/or mixed, or any part thereof or any interest therein, at any time and from time to time and upon such terms and for such prices or considerations as the trustee may deem advisable. Without in any manner limiting any power or authority of the trustee as set forth in this instrument, the authority and power of the trustee hereinbefore set forth in this Article I shall include and be deemed to include the following authorizations, powers and rights in the trustee, to be exercised in the sole judgment and discretion of the trustee, to-wit: To hold, maintain, operate and/or continue, at the risk of the trust estate and as long as the trustee may deem advisable, any and all property and/or business which the trustee may receive [148] hereunder, whether or not the same are or is permissible by law as investment for trust funds, or the trustee may sell, exchange or dispose of the same. To partition, divide and/or subdivide. To rent and/or lease for a term of ninety-nine (99) years or for any lesser term or for any term which shall or may last or extend for any term beyond or after the termination of this trust, and to such lessee or lessees and for such rents and upon such covenants, agreements, provisions, conditions and stipulations as the trustee may determine. To improve the property of the trust estate and/or repair and/or keep in good order any and all improvements on the property of the trust estate and to remove, substitute, alter and/or repair any

Exhibit B—(Continued)

improvement on any such property and/or add any improvement thereto. To borrow from time to time such sum or sums of money as the trustee may deem best to meet any cost or expense of the administration or execution of this trust if the trustee has not sufficient funds available of the trust estate to meet any such cost and/or expense. To fix the rate of interest and other terms of any such loan and to pay such interest on any such loan and to secure any such loan by mortgage, deed of trust, pledge or other lien upon or transfer of real, personal and/or mixed property of the trust estate or any part thereof. To loan the trustee's own funds to this trust at prevailing rates of interest, if such loan be necessary to meet any cost and/or expense of the administration and/or execution of this [149] trust and the trustee has not sufficient funds available of the trust estate therefor, any such loan with such interest thereon to be a first lien on the whole of the trust estate and the gross income therefrom and to be first repaid out of the gross income and/or principal of the trust estate. To in such manner and upon such terms as to the trustee shall seem best make all compromises and/or settlements which the trustee may deem necessary or proper as to any claim, question, matter or thing which may arise during or in the execution of this trust. To have respecting bonds, shares of corporate stock and other securities, whether similar or dissimilar, all the rights, powers and privileges of an owner, including though with-

Exhibit B—(Continued)

out limiting the foregoing, holding securities in the trustee's own name or otherwise, voting, giving proxies, payment of calls, assessments and other sums deemed by the trustee expedient for the protection of the interests of the trust estate, exchanging securities, selling or exercising stock subscription or conversion rights, participating in foreclosures, reorganizations, consolidations, mergers, liquidations, pooling agreements and voting trusts, and assenting to corporate sales, leases and encumbrances; the trustee, however, to assume or be under no personal liability in respect of any such bonds, shares and/or other securities at any time held hereunder. To reimburse the trustee from the income and/or principal of the trust estate for any such liability or expense incurred by the [150] trustee by reason of the trustee's ownership and/or holding of any property received and/or held in this trust. All discretions in this trust conferred upon the trustee shall, unless specifically limited, be absolute and uncontrolled and their exercise conclusive on all persons interested in this trust or the trust estate. The powers and discretions of the trustee enumerated herein are not to be construed as a limitation upon the trustee's general powers and discretions but the trustee in addition thereto is vested with and shall have, for the full duration of this trust, as to the trust estate, the income therefrom, and in the execution of this trust, the same and all the powers and discretions

Exhibit B—(Continued)

that an absolute owner of property has or may have.

ARTICLE II

The whole title, legal and equitable, in fee, to the trust estate, is and shall be vested in the trustee as such title in the trustee is necessary for the trustee's due execution of this trust. The beneficiaries hereunder take no estate or interest therein and their interests hereunder are personal property only consisting of the right to enforce the due performance of this trust.

ARTICLE III

From the gross income of the trust estate and/or if it be necessary, from the trust estate, the trustee shall first pay and discharge when due and payable any and all taxes, assessments and other charges imposed by [151] public authority on the trust estate or any part thereof, and may also first pay and discharge when due and payable any and all reasonable costs, expenses, charges and liabilities necessarily expended or incurred by the trustee in connection with the collection, care, administration, management or distribution of the trust estate and/or any part thereof and/or any income therefrom and/or the protection of the trust estate and/or any part thereof and/or this trust and/or its defense against legal, equitable and/or other attack, and also, if the trustee is a corporation and/or a person or persons other than said George S. Gaylord and/or Gertrude H. Gaylord above named (the word

Exhibit B—(Continued)

“corporation” including a national banking association) reasonable fees or compensation for the services of the trustee in the administration of this trust.

ARTICLE IV

The entire net income received from the trust estate and available for distribution shall be paid and distributed by the trustee, either monthly, quarterly or semiannually as the circumstances and condition of the trust estate will most conveniently permit, but in any event annually, to Margaret Gaylord Ruppel and Gertrude Gaylord (who are the daughters of said George S. Gaylord and Gertrude H. Gaylord above named, the said Margaret Gaylord Ruppel having been born on the 10th day of November, 1904, and the said Gertrude Gaylord having [152] been born on the 31st day of May, 1916) and the survivor of said daughters Margaret Gaylord Ruppel and Gertrude Gaylord, share and share alike if both of them be then living; provided, however, that in the event of the death of either said Margaret Gaylord Ruppel or Gertrude Gaylord prior to the termination of this trust leaving surviving her any lawful issue, then the share of the net income of the trust estate which said Margaret Gaylord Ruppel or Gertrude Gaylord so dying would otherwise be entitled to receive and have paid to her if she had continued to live, shall be paid to such lawful issue of her as long as such lawful issue shall continue to live during the exist-

Exhibit B—(Continued)

ence of this trust, such issue to take by right of representation and per stirpes and not per capita. While any beneficiary of this trust is a minor or otherwise legally incapacitated to handle personally any of the net income of the trust estate payable to him or her, then the same or any part thereof may by the trustee be paid to such beneficiary's duly appointed guardian or guardians, if any. Any part of the net income of the trust estate which the trustee would otherwise pay as in this Article IV above provided directly to any beneficiary of this trust and/or his or her guardian or guardians, if any, may, in the sole judgment and discretion of the trustee, instead of such direct payment by the trustee, be applied by the trustee to the use and/or for the proper care, maintenance and/or support and/or education [153] of such beneficiary.

ARTICLE V

This trust shall ipso facto cease and terminate upon the happening of either of the following events, whichever shall first happen: the attainment of the age of thirty (30) years by said Gertrude Gaylord or her death prior to her attaining such age of thirty (30) years.

ARTICLE VI

Upon the termination of this trust as hereinabove in Article V provided, all of the trust estate then in the possession or under the control of the trustee as the same then exists, shall immediately vest in

Exhibit B—(Continued)

and be delivered, paid, conveyed, assigned and transferred by the trustee unto said Margaret Gaylord Ruppel and Gertrude Gaylord or the survivor of them living at the time of said termination of this trust, share and share alike, however, if both of them shall then be living; provided, however, that in the event of the death of either of them prior to said termination of this trust leaving her surviving at the time of said termination of this trust lawful issue, then the share of the trust estate which said Margaret Gaylord Ruppel or Gertrude Gaylord so dying would have taken hereunder if she had been living at the time of said termination of this trust shall, upon said termination of this trust, immediately vest in and be delivered, paid, conveyed, assigned and transferred unto her said lawful issue, such lawful issue, however, to take per stirpes and by right of representation and not [154] per capita. In the event that upon the termination of this trust as hereinabove in Article V provided there shall then be living neither said Margaret Gaylord Ruppel nor said Gertrude Gaylord nor any lawful issue of either of them, then upon said termination of this trust all of the trust estate then in the possession or under the control of the trustee as the same then exists shall immediately vest in and be delivered, paid, conveyed, assigned and transferred unto said Gertrude H. Gaylord, the wife of said George S. Gaylord.

Exhibit B—(Continued)

ARTICLE VII

Every beneficiary of this trust is hereby restrained from in any manner anticipating, impairing, encumbering, alienating and/or disposing of his or her right, interest and/or estate, or any thereof, in and/or to any principal and/or income of the trust estate, and is without power so to do, nor shall any such right, interest and/or estate be subject to any liability or obligation of him or her or to any judgment, attachment, garnishment, execution, process of law, transfer by operation of law, bankruptcy proceeding or claim or demand of any creditor or other person than the beneficiary named. All payments, deliveries and distributions to be made under the provisions of this trust, unless in this declaration otherwise expressly provided, shall be payable, deliverable or distributable and only be made directly and personally to the beneficiary [155] or beneficiaries concerned and upon his, her or their personal receipt therefor and not otherwise, which personal receipt shall be a condition precedent to the making of any such payment, delivery or distribution.

ARTICLE VIII

In making any payment, distribution or delivery of any part of the principal of the trust estate the trustee shall make all divisions, partitions, allotments and distributions to effect such payment, delivery or distribution as and according to such

Exhibit B—(Continued)

method or procedure as the trustee may in the sole judgment and discretion of the trustee deem proper, and any and all acts of the trustee in determining the relative values of the property of the trust estate for the purpose of such division, partition, allotment, distribution and/or payment shall be conclusive on all persons interested therein. The trustee shall also make such conveyances, assignments and transfers and execute such writings and instruments as may be necessary to confirm in the payee, deliverer or distributee hereunder title and possession to the part of the principal of the trust estate so paid, delivered or distributed.

ARTICLE IX

In the event that any provision or provisions of this instrument or trust is or are, or is or are adjudged by a court of competent jurisdiction to be for any reason invalid or unenforceable, then the remainder hereof, dis- [156] regarding such provision or provisions, shall subsist and be carried into effect. The invalidity of any use or trust herein declared, if ever decreed by a court of competent jurisdiction, shall not vitiate such as are valid.

ARTICLE X

Said George S. Gaylord and Gertrude H. Gaylord, his wife, or either of them, shall have the right at any time, with the written consent of the trustee but not otherwise, to add to this trust other prop-

Exhibit B—(Continued)

erty which, upon acceptance thereof by the trustee, shall become a part of the trust estate to be held in trust for the uses and purposes set forth in this instrument and upon all of the terms and conditions hereof.

ARTICLE XI

Said George S. Gaylord and Gertrude H. Gaylord, his wife, or either of them, shall have the right at any time to resign as trustee of this trust by signing an instrument in writing declaring that they or he or she (as the case may be) so resigns as the trustee of this trust and acknowledging the execution of such instrument before a notary public or other officer authorized to take acknowledgments, which acknowledgment shall be certified so as to entitle the same to be recorded, and by recording such instrument in the office of the County Recorder of the County of Los Angeles, State of California. Said instrument in writing of such resignation shall be effective upon and as of the time of such recordation. In the event of the death of either said [157] George S. Gaylord or Gertrude H. Gaylord, or his or her resignation as trustee of this trust, or his or her inability or incapacity to act as such trustee, then the other one of said two persons, viz., George S. Gaylord and Gertrude H. Gaylord, shall act and be entitled to act as trustee of this trust and as such trustee shall have all rights, powers, authority, discretion and exemptions in this instrument provided for the trustee of this trust. Said George S. Gaylord shall have the right

Exhibit B—(Continued)

by an instrument in writing signed by him, and acknowledged by him before a notary public, or other officer authorized to take acknowledgments, which acknowledgment shall be certified so as to entitle the same to be recorded, and recorded in the office of said County Recorder, to appoint the successor or successors as the trustee (whether one or more) of this trust in the event that neither of the two original trustees of this trust, viz., said George S. Gaylord and Gertrude H. Gaylord, is acting as the trustee. In the absence of such appointment by said George S. Gaylord, said Gertrude H. Gaylord shall have the right by an instrument in writing signed by her and acknowledged by her before a notary public, or other officer authorized to take acknowledgments, and certified so as to entitle the same to be recorded, and recorded in the office of said County Recorder, to appoint such successor or successors as the trustee (whether one or [158] more) of this trust in the event that neither of the two original trustees of this trust, viz., said George S. Gaylord and Gertrude H. Gaylord, is acting as the trustee. In the event of the death of said George S. Gaylord or his resignation as trustee of this trust, or his inability or incapacity to act as such trustee, and of the death of said Gertrude H. Gaylord, or her resignation as the trustee of this trust, or her inability or incapacity to act as such trustee, then, in any such event and in the absence of any such appointment by said George S. Gay-

Exhibit B—(Continued)

lord or Gertrude H. Gaylord of the successor or successors as such trustee, The Northern Trust Company, of Chicago, Illinois, any successor and/or assign of said corporation whether by way of consolidation, merger, transfer of trust business, conversion into a state bank or otherwise, shall ipso facto succeed and act as the trustee of this trust.

ARTICLE XII

The word "trustee" as used in this instrument, means, unless otherwise expressly indicated, not only said first named trustee George S. Gaylord and Gertrude H. Gaylord and the survivor of them, but as well their successor or successors or the successor or successors of either of them as trustee or trustees (as the case may be) of this trust, the singular number including the plural where necessary. No bond or bonds or other security whatever shall ever be [159] required of the trustee for the performance of any duty or trust hereunder.

In Witness Whereof said George S. Gaylord and Gertrude H. Gaylord as trustee have set their hands and seals to this instrument this 7th day of November, 1935, at Pasadena, California.

Executed in Quadruplicate.

[Seal]

GEORGE S. GAYLORD

[Seal]

GERTRUDE H. GAYLORD

Exhibit B—(Continued)

State of California,

County of Los Angeles—ss.

On this 11th day of December, 1935, before me, J. C. Humphreys, a Notary Public in and for said County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared George S. Gaylord and Gertrude H. Gaylord, his wife, personally known to me to be the persons whose names are subscribed to the within and foregoing instrument, and acknowledged to me that they executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal in said county the day and year in this certificate first above written.

(Notarial Seal) J. C. HUMPHREYS

Notary Public in and for the County of Los Angeles, State of California. [160]

State of California,

County of Los Angeles—ss.

Before Me, the undersigned authority, a Notary Public in and for Los Angeles County, California, on this day personally appeared George S. Gaylord and Gertrude H. Gaylord, his wife, both known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they each executed the same for the purposes and consideration therein expressed, and the said Gertrude H. Gaylord, wife of the said George S. Gaylord, having been examined by me privily and apart from her husband and having the same

Exhibit B—(Continued)

fully explained to her, she, the said Gertrude H. Gaylord, acknowledged such instrument to be her act and deed, and she declared that she had willingly signed the same for the purposes and consideration therein expressed, and that she did not wish to retract it.

Given Under My Hand And Seal of Office, this 6th day of January, 1938.

(Notarial Seal) J. C. HUMPHREYS

Notary Public in and for Los Angeles County, California.

My Commission Expires June 29th, 1939. [161]

EXHIBIT C

DECLARATION BEING A PART OF A CERTAIN DECLARATION OF TRUST DATED NOVEMBER 7, 1935.

Know All Men By These Presents:

That Whereas the undersigned, George S. Gaylord and Gertrude H. Gaylord, his wife, of the City of Pasadena, in the County of Los Angeles, State of California, do in and by an instrument of even date herewith entitled Declaration Of Trust certify and declare and in and by said instrument have certified and declared that they hold and shall and will hold the following described personal property, to-wit: seven thousand (7,000) shares of the common capital stock of Marathon Paper Mills Com-

pany, a Wisconsin corporation, of the par value of Twenty-five Dollars (\$25.00) per share, and any and all proceeds thereof, In Trust, Nevertheless, for the uses and purposes and upon the terms and conditions set forth in said Declaration of Trust, reference to which Declaration of Trust is hereby made for further particulars thereof; Now, Therefore, said George S. Gaylord and Gertrude H. Gaylord do further certify and declare that the trust created and provided for in said Declaration of Trust was always intended and is intended by said trustors and trustees, George S. Gaylord and Gertrude H. Gaylord, to be and is and shall always be absolutely irrevocable and that this further declaration of said undersigned is and is intended to be and shall always be [162] a part of said Declaration of Trust and is and is intended to be and shall always be taken with and construed as a part of said Declaration of Trust the same as though this present declaration had been physically incorporated in said Declaration of Trust.

In Witness Whereof, said George S. Gaylord and Gertrude H. Gaylord, said trustors and trustees, have set their hands and seals to this instrument as of this 7th day of November, 1935, at Pasadena, California.

Executed In Quadruplicate.

[Seal] GEORGE S. GAYLORD

[Seal] GERTRUDE H. GAYLORD

State of California,
County of Los Angeles—ss.

George S. Gaylord, being first duly sworn, deposes and says that he is the George S. Gaylord named in the foregoing instrument and that he has read and understands the same and that all statements made in said instrument are and each of said statements is true and correct.

GEORGE S. GAYLORD

Subscribed and sworn to before me this 27th day of March, 1940.

[Notarial Seal] **J. C. HUMPHREYS**

Notary Public in and for the County of Los Angeles, State of California. [163]

State of California,
County of Los Angeles—ss.

Gertrude H. Gaylord, being first duly sworn, deposes and says that she is the Gertrude H. Gaylord named in the foregoing instrument and that she has read and understands the same and that all statements made in said instrument are and each of said statements is true and correct.

GERTRUDE H. GAYLORD

Subscribed and sworn to before me this 27th day of March, 1940.

[Notarial Seal] **J. C. HUMPHREYS**

Notary Public in and for the County of Los Angeles, State of California.

State of California,
County of Los Angeles—ss.

On this 27th day of March, 1940, before me, J. C. Humphreys, a Notary Public in and for said County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared George S. Gaylord and Gertrude H. Gaylord, his wife, personally known to me to be the persons whose names are subscribed to the within and foregoing instrument, and acknowledged to me that they executed the same. [164]

In Witness Whereof, I have hereunto set my hand and affixed my official seal in said county the day and year in this certificate first above written.

[Notarial Seal] J. C. HUMPHREYS

Notary Public in and for the County of Los Angeles, California.

State of California,
County of Los Angeles—ss.

Before Me, the undersigned authority, a Notary Public in and for Los Angeles County, California, on this day personally appeared George S. Gaylord and Gertrude H. Gaylord, his wife, both known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they each executed the same for the purposes and consideration therein expressed, and the said Gertrude H. Gaylord, wife of the said George S. Gaylord, having been examined by me privily and apart from her husband and having the same

fully explained to her, she, the said Gertrude H. Gaylord, acknowledged such instrument to be her act and deed, and she declared that she had willingly signed the same for the pur- [165] poses and consideration therein expressed, and that she did not wish to retract it.

Given Under My Hand And Seal Of Office, this 27th day of March, 1940.

[Notarial Seal] J. C. HUMPHREYS

Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires June 26-1943. [166]

EXHIBIT D

Form 709

Treasury Department
Internal Revenue
Service

Revised December 1934

(Space for use of
Collector)

GIFT TAX RETURN

CALENDAR YEAR 1935

6th Calif.

556

2,531.27

(To be filed in duplicate under the provisions of the
Gift Tax Act of 1932, as Amended)(Space for use of
Bureau)Name of Donor George S. Gaylord
Address 639 Rosemont Ave., Pasadena, Calif.
Citizenship U. S. A.
Residence Above

Have you (the donor), during the calendar year indicated above, without an adequate and full consideration in money or money's worth, made any transfer exceeding \$5000 in value (or regardless of value if a future interest) as follows? (Answer "Yes" or "No.") : yes.

Exhibit D—(Continued)

1. By the creation of an irrevocable trust for the benefit of another: yes;
2. By making additions to an irrevocable trust previously created for the benefit of another: no;
3. By permitting a beneficiary (other than yourself) to receive the income from a revocable trust, where you possessed the power of revocation and chose during the year not to exercise it, whether such trust was created before or after the enactment, on June 6, 1932, of the Gift Tax Act of 1932: no;
4. By relinquishing a power to revoke a trust created for the benefit of another: no;
5. By permitting another to withdraw funds from a joint bank account which were deposited by you: no;
6. By irrevocably assigning a life insurance policy, or by naming a beneficiary of a policy without retaining any of the legal incidents of ownership therein: yes;
7. By paying a premium under an insurance policy in which you retain none of the legal incidents of ownership and the proceeds of which are payable to a beneficiary other than yourself or your estate: no;
8. By conveying title to another and yourself as joint tenants or to your wife or husband and yourself as tenants by the entirety: no;
9. By any other method, direct or indirect, whereby another received a gift: no.

If the answer is "Yes" to any of the foregoing, such transfer should be fully disclosed under schedule A or B.

Exhibit D—(Continued)

COMPUTATION OF AMOUNT OF NET
GIFTS FOR YEAR

CS

1. Amount of gifts for year other than charitable, etc., gifts (item c, schedule A)	\$125,278.08
2. Amount of charitable, public, and similar gifts for year (item c, schedule B)	50
3. Total amount of gifts for year (item 1 plus item 2)	\$125,328.08
4. Amount of charitable, public, and similar gifts for year (item c, schedule B)	50.00
5. Specific exemption claimed (not exceeding \$50,000, less total amount of specific exemption claimed for preceding years)	50,000.00
6. Total deductions (item 4 plus item 5)	50,050.00
7. Amount of net gifts for year (item 3 minus item 6)	\$75,278.08

[167]

COMPUTATION OF TAX

1. Amount of net gifts for year (item 7, above)	\$75,278.08
2. Total amount of net gifts for preceding year (item b, schedule C) 1st sup. Int 2.97	0
3. Total net gifts (item 1 plus item 2)	\$75,278.08
4. Tax computed on item 3	\$
5. Tax computed on item 2	\$
6. Tax on net gifts for year (item 4 minus item 5) ..	\$ 2,531.27

Exhibit D—(Continued)

AFFIDAVIT

I swear (or affirm) that this return, including the accompanying schedules and statements, if any, has been examined by me, and to the best of my knowledge and belief, is a true, correct, and complete return for the calendar year stated, pursuant to the Gift Tax Act of 1932, as amended, and the regulations issued thereunder, and no transfer required by said law and regulations to be returned other than the transfer or transfers disclosed herein under schedules A or B was made by me (the donor) during said calendar year.

G. S. GAYLORD

(Signature of donor/executor)

Sworn to and subscribed before me this 3rd day of February, 1936.

(Notarial Seal)

ALICE F. JACKSON

(Signature and title of officer administering oath)

[168]

SCHEDULE A.—GIFTS DURING YEAR OTHER THAN CHARITABLE, PUBLIC, AND SIMILAR GIFTS

Item No.	Description of gift, motive, donor's name and address, and relationship to donor	Date of Gift	Value at Date of Gift
5000	Shares of common stock of Marathon Paper Mills Co. of Wausau, Wis., to a trust for benefit of Margaret G. Ruppel and Gertrude Gaylord my daughters	Nov 7 1935	\$125,000.00 OK c25
1	5 room residence 1015 Davis St., Gendale, Calif., assessed by county tax appraiser at \$1200.00 1935: Tract 5086 as per book 110 Pages 63-64 map of Los Angeles County.....	June 11 '35	3000. mo. R c100

Exhibit D—(Continued)

Schedule A.—(Continued)

Item No.	Description of gift motive, donee's name and address, and relationship to donor	Date of Gift	Value at Date of Gift
10	Shares Latisteel Corp. 1310 E. Foothill Blvd., Pasadena, data Calif., new corporation 100.00		1000.00
	SWE par. 1000.00 represents amount paid in on above stock....	Dec 12 1935	SWE
1	Northwestern Mutual Life Ins. Co. policy 653962, see attached	Dec. 13 '35	1800.06
1	Northwestern Mutual Life Ins. Co. policy 912851, see attached	Dec. 13 '35	1499.33
1	Northwestern Mutual Life Ins. Co. policy 2037662, see attached	Dec. 13 '35	7662.85
1	New York Life Ins. Co. policy 6175331, see attached	Dec. 10 '35	315.84
	All above Insurance policies conveyed to Gertrude H. Gaylord, my wife, Margaret G. Ruppel and Gertrude Gaylord, my daughters, shares and share alike or to the survivors.		
(a)	Total		\$140,278.08
(b)	Less total exclusions not exceeding \$5,000 for each donee (except future interests).....		15,000.00
(c)	Included amount of gifts for year other than charitable, etc., gifts		\$125,278.08

Exhibit D—(Continued)

SCHEDULE B.—CHARITABLE, PUBLIC, AND SIMILAR
GIFTS DURING YEAR

Item No.	Description of gift, name and address of donee, and character of institution	Date of Gift	Value at Date of Gift
	Community Chest of Pasadena, Calif.	July 1935	\$ 50.00
(a)	Total		\$
(b)	Less total exclusions not exceeding \$5,000 for each donee (except future interests).....		.....
(c)	Included amount of charitable, public, and similar gifts for year		\$

SCHEDULE C.—RETURNS, AMOUNTS OF SPECIFIC EX-
EMPTION, AND NET GIFTS FOR PRECEDING YEARS
(Subsequent to June 6, 1932)

[Followed by form not filled in]

[169]

Northwestern Mutual Life Insurance Company—face of policy \$2500.00, issued March 2, 1906, \pm 653962 net cash value December 13, 1935, \$1800.06 paid up as to premiums. Straight Life.

Northwestern Mutual Life Insurance Company—face of policy \$3000.00, issued February 1, 1912, \pm 912851 net cash surrender value December 13, 1935, \$1499.33 paid up as to premiums. Straight Life.

Northwestern Mutual Life Insurance Company—face of policy \$50,000.00, issued Dec. 1, 1927, \pm 2037662 net cash surrender value December 13, 1935, \$10,930.94 less loan on policy \$3267.09 equals net value \$7662.85 premiums \$2131.00. Straight Life.

New York Life Insurance Company—face of policy \$8415.00 issued July 28, 1917, \pm 6175331 net cash surrender value December 10, 1935. \$5145.84 less loan against same \$4830 equals \$315.84 net value. Straight Life.

All values furnished by Insurance Cos.

[170]

EXHIBIT E

Form 709
Treasury Department
Internal Revenue
Service

Revised December 1934

(Space for use of
Collector)

GIFT TAX RETURN

CALENDAR YEAR 1935

(To be filed in duplicate under the provisions of the
Gift Tax Act of 1932, as Amended)

Name of Donor Gertrude H. Gaylord
Address 639 Rosemont Ave., Pasadena, Calif.
Citizenship U. S. A.
Residence Above

S

6th Calif.
683

(Space for Use of
Bureau)

Have you (the donor), during the calendar year indicated above, without an adequate and full con- sideration in money or money's worth, made any transfer exceeding \$5,000 in value (or regardless of value if a future interest) as follows? (Answer "Yes" or "No"): Yes.

Exhibit E—(Continued)

- | | |
|---|---|
| <p>1. By the creation of an irrevocable trust for the benefit of another: yes;</p> <p>2. By making additions to an irrevocable trust previously created for the benefit of another: no;</p> <p>3. By permitting a beneficiary (other than yourself) to receive the income from a revocable trust, where you possessed the power of revocation and chose during the year not to exercise it, whether such trust was created before or after the en-</p> | <p>actment, on June 6, 1932, of the Gift Tax Act of 1932: no;</p> <p>4. By relinquishing a power to revoke a trust created for the benefit of another: no;</p> <p>5. By permitting another to withdraw funds from a joint bank account which were deposited by you: no;</p> <p>6. By irrevocably assigning a life insurance policy, or by naming a beneficiary of a policy without retaining any of the legal incidents of ownership therein: no;</p> |
| <p>7. By paying a premium under an insurance policy in which you retain none of the legal incidents of ownership and the proceeds of which are payable to a beneficiary other than yourself or your estate: no;</p> <p>8. By conveying title to another and yourself as joint tenants or to your wife or husband and yourself as tenants by the entirety: no;</p> <p>9. By any other method, direct or indirect, whereby another received a gift: no.</p> | <p>7. By paying a premium under an insurance policy in which you retain none of the legal incidents of ownership and the proceeds of which are payable to a beneficiary other than yourself or your estate: no;</p> <p>8. By conveying title to another and yourself as joint tenants or to your wife or husband and yourself as tenants by the entirety: no;</p> <p>9. By any other method, direct or indirect, whereby another received a gift: no.</p> |

If the answer is "Yes" to any of the foregoing, such transfer should be fully disclosed under schedule A or B.

Exhibit E—(Continued)

COMPUTATION OF AMOUNT OF NET
GIFTS FOR YEAR

CS

1. Amount of gifts for year other than charitable, etc., gifts (item c, schedule A)	\$40,000.00	
2. Amount of charitable, public, and similar gifts for year (item c, schedule B)	0	
3. Total amount of gifts for year (item 1 plus item 2)		\$40,000.00
4. Amount of charitable, public, and similar gifts for year (item c, schedule B)	0	
5. Specific exemption claimed (not exceeding \$50,000, less total amount of specific exemption claimed for preceding years)	\$40,000.00	
6. Total deductions (item 4 plus item 5)		40,000.00
7. Amount of net gifts for year (item 3 minus item 6)	\$	0

[171]

COMPUTATION OF TAX

[Followed by form not filled in]

AFFIDAVIT

I swear (or affirm) that this return, including the accompanying schedules and statements, if any, has been examined by me, and to the best of my knowledge and belief, is a true, correct, and complete return for the calendar year stated, pursuant to the Gift Tax Act of 1932, as amended, and the regulations issued thereunder and no transfer required by said law and regulations to be returned other than the transfer or transfers disclosed herein under schedules A or B was made by me (the donor) during said calendar year.

GERTRUDE H. GAYLORD

(Signature of donor/executor)

Exhibit E—(Continued)

Sworn to and subscribed before me this 3rd day of February, 1936.

(Notarial Seal) ALICE F. JACKSON
(Signature and title of officer administering oath)

AFFIDAVIT

I swear (or affirm) that I prepared this return for the person named herein, and that this return, including the accompanying schedules and statements, if any, is a true, correct, and complete statement of all the information respecting the donor's gift tax liability of which I have any knowledge.

G. S. GAYLORD D
(Signature of person preparing return)

Sworn to and subscribed before me this 3rd day of February, 1936.

(Notarial Seal) ALICE F. JACKSON
(Signature and title of officer administering oath)

[172]

SCHEDULE A.—GIFTS DURING YEAR OTHER THAN CHARITABLE, PUBLIC, AND SIMILAR GIFTS

Item No.	Description of gift motive, donee's name and address, and relationship to donor	Date of Gift	Value at Date of Gift
2000	Shares of Common Stock of Marathon Paper Mills Co. of Wausau, Wis.	Nov 7 1935	OK \$50,000.00
	at 25		
	Data submitted F. B.		
	Geo. S. Gaylord		
	X ref. donee		
	says 7000 shs !		
(a)	Total		\$50,000.00
(b)	Less total exclusions not exceeding \$5,000 for each donee (except future interests).....		10,000.00
(c)	Included amount of gifts for year other than charitable, etc., gifts		\$40,000.00

Exhibit E—(Continued)

SCHEDULE B—CHARITABLE, PUBLIC, AND SIMILAR
GIFTS DURING YEAR

Item No.	Description of gift, name and address of donee, and character of institution	Date of Gift	Value at Date of Gift
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None

- (a) Total\$
- (b) Less total exclusions not exceeding \$5,000 for each donee (except future interests).....
- (c) Included amount of charitable, public, and similar gifts for year\$

SCHEDULE C.—RETURNS, AMOUNTS OF SPECIFIC EX-
EMPTION, AND NET GIFTS FOR PRECEDING
YEARS (Subsequent to June 6, 1932)

Calendar Year	Collection District in which Return was filed	Prior	Amount of Specific Exemption	Amount of Net Gifts
	None		\$	\$

- (a) Total amount of specific exemption claimed for preceding years \$.....
- (b) Total amount of net gifts for preceding years\$

EXHIBIT F

SHOWING COST OF MARATHON PAPER
MILLS COM. STOCK

Menasha Printing and Carton Co.

Value March 1, 1913	\$350,000.00
July 1, 1917 invested	152,500.00
	<hr/>
	502,500.00
Less—Preferred stock sold July 1917.....	20,000.00
	<hr/>
	\$482,500.00

Received for 3,357 shares Menasha Printing and Carton Co.
stock, securities of Marathon Paper Mills Co., as follows:

\$1,038,000.00 par 5½% Bonds	\$ 1,038,000.00
6,728 shares common stock at 130.30.....	876,658.40
	<hr/>
	\$ 1,914,658.40

\$1,038,000.00 equals 54.21% of total received

\$ 876,658.40 equals 45.79% of total received

45.79% of \$482,500.00 equals \$220,936.75 or original cost of
6,728 shares of common stock or \$32.84 per share.

Stock was divided four for one, making original cost of present
common shares \$8.21 per share. [174]

EXHIBIT G

MEMORANDUM SHOWING HOW VALUE OF
STOCK OF MARATHON PAPER MILLS
COMPANY, OWNED BY GEORGE S. GAY-
LORD, IS ESTABLISHED.

This stock originated with various investments
in Menasha Carton Company, a corporation, which
was merged August 1917, with Menasha Printing

Exhibit G—(Continued)

Company to form the Menasha Printing & Carton Company. The basis for the new securities issued in this merger was the actual value of physical assets of the merged companies which were appraised at \$186,000.00 for the Menasha Carton Company, and \$774,000.00 for the Menasha Printing Company. Common stock in the amount of \$500,000.00 par value and preferred stock or bonds in the amount of \$460,000.00 par value were issued by the new company. As the new securities were issued for physical assets only, the par value of the stock and bonds issued does not reflect the fair market value. The fair market value includes goodwill valued under ordinary circumstances by taking the average earnings for a number of years just prior to date value is to be determined. As the Menasha Carton Company is the Company in which Mr. Gaylord's holdings originated, and on which the value of his holdings in Marathon Paper Mills Company depended, it becomes necessary to arrive at the value as of August 1917 of his interest in that company as his basis for his Marathon Paper Mills Company stock.

Due to the entry of the United States in war in 1917, business in most every line had increased materially over the preceding years and the value of the business could not be [175] calculated on the basis of the prior years. More weight necessarily had to be given to the present and future, particularly when a business had just started a few years prior to that time. Market quotations for stocks

Exhibit G—(Continued)

generally had reached a very high level by August 1917. The earnings of Menasha Carton Company, Menasha Printing Company and the consolidated company, obtained from old records of the companies show a very rapid rise starting in 1917, which continued through the subsequent years, substantiating the value existing in 1917. These earnings are as follows:

	Menasha Carton Company	Menasha Printing Company	Consolidated Company
1915	\$29,369.09	\$ 99,889.97	\$ -----
1916	28,225.90	286,271.56	-----
1917 (a)	56,220.99	-----	(b) 303,236.91
1918	-----	-----	297,825.12
1919	-----	-----	232,595.87

(a) Seven months only—same basis for twelve months—
\$96,378.84

(b) Includes \$38,289.80 Carton Company profits for five
five months.

Tax payer believes that the 1917 earnings of the Carton Company capitalized at ten per cent reflect correctly the fair market value of the stock of that company establishing the basis of his stock in Marathon Paper Mills Company although subsequent earnings of the new company are much greater. The rate per share of Marathon stock is arrived by using the value of Marathon Carton Company stock as of August 1, 1917, based upon earnings for the first seven months of that year capitalized at 10% as follows: [176]

Exhibit G—(Continued)

Value of Carton Company stock, August 1917	\$963,788.40
G. S. Gaylord's share—337/726	\$447,378.40
Additional amount paid for shares in new corporation	152,161.11
<hr/>	
Total basis 1,960 shares Menasha Printing & Carton Co. and 190 shares of preferred stock (or bonds)	599,539.51
Less—preferred stocks (or bonds) sold.....	19,000.00
<hr/>	
Net value of stock (average per share \$296.194)	\$580,539.51
<hr/>	

[177]

COMPUTATION OF BASIS OF MARATHON PAPER
MILLS COMPANY STOCK

Value of Manasha Carton Company stock August 1917, based upon earnings of Carton Co. seven months of 1917	\$963,788.40
G. S. Gaylord share (337/726)	447,378.40
Additional amount paid to acquire 1960 shares of common and 190 shares of preferred (also referred to as bonds) Menasha Printing and Carton Co.	152,161.11
<hr/>	
	599,539.51
Less—value allocated to preferred stock or bonds (later retired)	19,000.00
<hr/>	
Net value of common stock (1960 shares).....	580,539.51
Value per share \$296.194	
Deduct cost of sales to employees prior to January 1, 1925—185 shares at \$296.194	54,795.89
<hr/>	
Net value of 1,775 shares	525,743.62
<hr/>	
Stock dividend (1-2-25) 100%—reduces value per share to \$148.097, and increases number of shares to 3,550.	

Exhibit G—(Continued)

Less—Cost of—

350 shares exchanged for 432 shares

Robert Gaylord, Inc. (1-2-25)—350

shares at \$148.097\$ 51,833.95

195 shares sold 10-5-25 and 4-1-26

at 148.097 28,878.92 80,712.87

Remaining value for 3,005 shares

(\$148.097 per share) 445,030.75

Add—352 shares acquired (8-24-27) from C. W.

Gaylord for 432 shares of Robert Gaylord, Inc.

(value based upon value of 3357 shares owned

after this was acquired, all of which was ex-

changed for \$1,914,658.40 in stock and bonds of

new corporation—352/3357 of \$1,914,658.40..... 200,762.51

Cost of Marathon stock and bonds..... 645,793.26

[178]

Bonds 54.21% of \$645,793.26 or \$350,084.53

Stock 45.79% of \$645,793.26 or \$295,708.73

Basis for each share—

 $\$295,708.73 \div 6728 = 43.952$ per share

Stock split—4 for 1 December 2, 1929, reducing price to \$10.988 correct basis for all shares sold by George S. Gaylord in 1935, 1936, 1937, 1938 and all excepting last 100 shares sold in 1939, and for all shares sold by Gertrude H. Gaylord acquired by gift from George S. Gaylord, 2-9-32 and for all shares sold by the trustees out of the trust estate acquired from George S. Gaylord and Gertrude H. Gaylord in 1935. The last 100 shares acquired by George S. Gaylord was purchased at \$17.00 per share.

Note—Stock transactions prior to consolidation with Marathon Paper Mills Co. are set forth in Rev-

Exhibit G—(Continued)

enue Agents report dated January 20, 1941, on George S. Gaylord in Exhibit A.

[Endorsed]: U.S.B.T.A. Filed Nov. 26, 1941.

[179]

[Title of Board and Cause.]

ANSWER

The Commissioner of Internal Revenue, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, for answer to the petition of the above-named taxpayer, admits, and denies as follows:

1 and 2. Admits the allegations contained in paragraphs 1 and 2 of the petition.

3. Admits that the taxes in controversy are income taxes for the calendar years 1936, 1937, 1938 and 1939; denies the remainder of the allegations contained in paragraph 3 of the petition.

4. (I) to (XLIII), inclusive. Denies the allegations of error contained in subparagraphs (I) to (XLIII), inclusive, of paragraph 4 of the petition.

5. (a) The respondent admits that as of November 7, 1935, the petitioner's husband, George S. Gaylord, and the [180] petitioner executed a certain declaration of trust in which they named themselves as "trustee" (sic) and their two daughters, Margaret Gaylord Ruppel and Gertrude Gaylord, as beneficiaries, and in the event of the death of either or both of them during the existence of the trust,

the issue of either or both of them, as the case might be, due to the death of one or both of the first-named beneficiaries.

Respondent also admits that the trust embraced the property substantially of the kind and amount described by the petitioner, but because respondent does not know as a matter of fact whether or not it was recorded in the places and under the circumstances stated by the petitioner, and does not know as a matter of fact whether or not the purported gift tax returns were filed and gift taxes paid thereon in the manner and form related by petitioner, and does not know as a matter of fact whether the other matter and things related by petitioner existed, happened or were done in the manner and at the times stated by the petitioner in said subparagraph (a) of paragraph 5 of the petition, the respondent therefore, for lack of information sufficient upon the basis of which to form a belief as to the truth or accuracy thereof, denies each and every allegation contained in said subparagraph (a) not expressly admitted. Furthermore, respondent denies that the trust dated November 7, 1935, created by the petitioner was an irrevocable trust. [181]

(b) Denies the allegations contained in subparagraph (b) of paragraph 5 of the petition.

(c) Respondent admits that the two named beneficiaries of said trust, Margaret Gaylord Ruppel and Gertrude Gaylord Bruce (named in said declaration of trust as Gertrude Gaylord), are the daugh-

ters of the petitioner, Gertrude H. Gaylord, and George S. Gaylord, her husband, and that said Margaret Gaylord Ruppel was born on November 10, 1904, and said Gertrude Gaylord Bruce was born on May 31, 1916, and that each of said beneficiaries has lawful issues now living. Respondent also admits that said Margaret Gaylord Ruppel has two children now living, to-wit, a daughter, Barbara Brunker, who was born October 14, 1925, and a son, Robert Brunker, born June 3, 1928. It is further admitted that said Gertrude Gaylord Bruce has one child, to-wit, a daughter, Ann Bruce, born April 20, 1938. For lack of information sufficient upon the basis of which to form a belief as to the truth or accuracy of the remaining allegations of said subparagraph (c) of paragraph 5 of the petition, respondent denies the same.

(d) For lack of information sufficient upon the basis of which to form a belief as to the truth or accuracy of subparagraph (d) of paragraph 5 of the petition, respondent denies the same. [182]

(e) Denies the allegations contained in subparagraph (e) of paragraph 5 of the petition.

(f) For lack of information sufficient upon the basis of which to form a belief as to the truth or accuracy of subparagraph (f) of paragraph 5 of the petition, respondent denies the same.

(g) and (h). Denies the allegations contained in subparagraphs (g) and (h) of paragraph 5 of the petition.

(i) (1) and (2). Denies the allegations con-

tained in subparagraph (i), and subsections (1) and (2) thereof, of paragraph 5 of the petition.

(j) Denies the allegations contained in subparagraph (j) of paragraph 5 of the petition.

(k) Admits that in or about March 1938, the petitioner, Gertrude H. Gaylord, in her individual capacity, and her said husband, George S. Gaylord, in his individual and personal capacity, and for the heretofore mentioned trust, by its trustees Gertrude H. Gaylord and George S. Gaylord purchased each an undivided one-third interest in business property situated in the City of Santa Monica, California, consisting, at the time, of land improved with a storeroom building then occupied by several different tenants holding under separate rental contracts or leases, and admits that during said year that the building was acquired the above-described owners thereof demolished and razed the old building and [183] commenced the erection of the new building, but denies that the petitioner and his co-owners, as he alleges, did not contemplate and intend at the time of the purchase of said property to demolish the old building that was thereon and to erect in the place thereof a new building.

6. Denies each and every allegation contained in the petition not hereinbefore specifically admitted or denied.

Wherefore it is prayed that the determination of the Commissioner be approved.

[Signed] J. P. WENCHEL FTH

Chief Counsel, Bureau of Internal Revenue.

Of Counsel:

ALVA C. BAIRD,

Division Counsel.

FRANK T. HORNER,

B. M. COON,

Special Attorneys,

Bureau of Internal Revenue.

BMC/fmt 12/26/41

[Endorsed]: U.S.B.T.A. Filed Jan. 2, 1942. [184]

The Tax Court of the United States

GEORGE S. GAYLORD,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

GERTRUDE H. GAYLORD,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Docket Nos. 109138, 109273. Promulgated,
February 18, 1944.

FINDINGS OF FACT AND OPINIONS

1. The Civil Code of California, by amendment made in 1931, provides that, unless expressly made irrevocable by the instrument creating it, every voluntary trust (not created prior to the amendment) shall be revocable by the trustor. In 1935 the petitioners, residents of California, decided to make gifts to their two daughters and to effectuate the gifts by creating an irrevocable trust of which the petitioners would be trustees and the daughters the beneficiaries. Petitioners requested their counsel to prepare an instrument to carry out their purpose. The instrument prepared and executed did not contain any provision respecting revocability or irrevocability. Neither petitioners nor their counsel was then aware of the above provision of the Cali-

for California Civil Code. As soon as he learned of the said provision, counsel drafted an instrument declaring that the trust is and was always intended to be irrevocable. This latter instrument was executed by petitioners on March 27, 1940. *Held*, that under the law of California, the trust was revocable during the taxable years 1936 through 1939 and that the trust income for those years was taxable to the petitioners in the proportion that the amount of corpus contributed by each bore to the total corpus.

2. Basis determined for computing gain or loss on certain shares of corporate stock sold by petitioners and the trust during the years involved herein.

3. In 1938 the petitioners and the trust purchased a certain improved rental property without any intention of removing the building thereon and erecting a new structure. Thereafter during the year it was found desirable to remove the building and erect a new and larger one in order to obtain tenants, and the petitioners decided to do so. Early in the following year the building was removed and a new one erected. *Held*, that the amounts deducted by the petitioners and the trust as losses sustained on the removal of the old building are allowable.

4. Amount of loss determined with respect to the destruction of a pear orchard in order to devote the land to other uses. [185]

Thomas A. J. Dockweiler, Esq., and James W. Bon-
tems, C.P.A., for the petitioners.

Byron M. Coon, Esq., for the respondent.

Turner, Judge: The respondent determined the following deficiencies in income tax against the petitioners for the years indicated:

Year	George S. Gaylord-Docket No. 109138	Gertrude H. Gaylord-Docket No. 109273
	Deficiency	Deficiency
1936.....	\$17,835.82	\$1,087.40
1937.....	12,033.50	4,925.01
1938.....	10,442.62	32.51
1939.....	9,206.82	1,998.71

The questions presented are the correctness of the respondent's action (1) in determining that the income for the years 1936 through 1939 of a trust created by petitioners, and of which they were trustees, was taxable to petitioners for said years; (2) in determining that the basis for computing gain on certain corporate stock sold by petitioners and the trust during 1936 through 1939 was \$2.83542 per share; (3) in disallowing deductions of \$5,076.11 taken by each of the petitioners and the trust for 1938 as losses sustained on demolition of a building; (4) in disallowing \$3,456 of a deduction of \$4,320 taken by George S. Gaylord in 1939, as a loss sustained on the removal of a pear orchard from a ranch owned by him; and (5) in disallowing \$1,400 of the deductions of \$2,650 taken by each of the petitioners as losses sustained on the destruction by storm of ornamental trees on prop-

erty owned by petitioners and occupied by them as their residence. Issue No. 5 was abandoned by the petitioners at the time of the hearing, leaving the first four issues for determination.

For convenience, the discussion of each issue will follow immediately after the findings of fact relating thereto.

Issue 1.—Taxability to Petitioners of the Income of the Trust.

FINDINGS OF FACT

The petitioners are husband and wife, residents of Pasadena, California, and filed separate income tax returns for 1936 through 1939 with the collector of internal revenue for the sixth district of California.

As the issue of their marriage the petitioners have two daughters, Margaret and Gertrude. Margaret was born on November 10, 1905, and married Albert Bruner in 1923. Two children were born of that marriage; one on October 14, 1925, and the other on June 4, 1927, and both are still living. Subsequently Margaret divorced Bruner, [186] and in 1931 married Frederick Ruppel. Both Margaret and Ruppel are still living. The petitioners' other daughter, Gertrude, was born on May 31, 1916, and on May 29, 1937, married Eugene L. Bruce. Gertrude and Bruce are still living, and have one child, who was born in April 1938.

Sometime prior to September 1935, the petitioners decided to set up a trust for the benefit of their two daughters, and in case of the death of a

daughter, then for the benefit of the children of such daughter. On December 11, 1935, the petitioners signed and acknowledged a declaration of trust, dated November 7, 1935, in which they were designated both grantors and trustees and designated jointly as trustee. A trust, sometimes hereinafter referred to as the Gaylord trust, was declared with respect to 7,000 shares of the common capital stock of Marathon Paper Mills Co., 5,000 shares of which were contributed by Gaylord and 2,000 shares by Mrs. Gaylord.

The trust instrument did not contain any provision relating to its revocability or irrevocability.

When requesting counsel to prepare the trust instrument, Gaylord told him that he and Mrs. Gaylord desired to form an irrevocable trust with respect to the stock. At the time the petitioners signed the trust instrument they were advised by counsel that the trust was irrevocable. After signing the instrument, they left it in the custody of counsel. On February 4, 1936, the petitioners filed gift tax returns, prepared by Gaylord, for 1935, in which they reported the creation of an irrevocable trust and the transfer thereto of the above mentioned shares of stock in Marathon Paper Mills Co., sometimes hereinafter called Marathon. Mrs. Gaylord reported the 2,000 shares of stock contributed by her as having a value of \$50,000, but, by reason of exclusions and the specific exemption taken, she reported no gift tax liability. Gaylord reported total gifts in the amount of \$140,278.08, of which \$125,000 was reported as the value of the 5,000 shares

of Marathon stock contributed by him to the trust. After taking exclusions totaling \$15,000 and a specific exemption of \$50,000, his return showed a gift tax liability of approximately \$2,500, which he paid. Subsequently in 1936 Gaylord paid an additional gift tax of approximately \$100 with respect to the said return. The certificates for the 7,000 shares of Marathon stock were placed in a safe deposit box in California, in the name of Gaylord and Mrs. Gaylord, as trustees, and remained there until the stock was sold. The trustees sold some of the stock in each of the years 1936 through 1939, the last of it being sold in the latter year. For convenience in making delivery upon sale, certificates were sent from time to time to a bank in Chicago, in which the proceeds of all sales were deposited in an account in the names of the petitioners as trustees. [187]

In connection with the purchase of real property situated in Los Angeles County, California, the trustees, on September 23, 1937, had the trust instrument recorded in the office of the county recorder of that county. In 1938 the trustees made certain purchases of real estate situated in Texas, totaling about \$90,000, and in connection therewith had the trust instrument recorded in four counties of that state.

For each of the years 1936 through 1939, a fiduciary income tax return was filed for the trust by the trustees, in which the daughters were shown as the beneficiaries of the trust, with each entitled

to one-half of the income thereof. For each of the said years the daughters filed income tax returns and paid the tax shown to be due thereon. In their returns they reported as taxable income received from the trust the amounts shown by the fiduciary income tax returns as having been distributed to them during the respective years.

At the instance of their counsel, the petitioners on March 27, 1940, signed and acknowledged an instrument reading as follows:

Declaration Being a Part of a Certain Declaration
of Trust Dated November 7, 1935

Know All Men by These Presents:

That Whereas the undersigned, George S. Gaylord and Gertrude H. Gaylord, his wife, of the City of Pasadena, in the County of Los Angeles, State of California, do in and by an instrument of even date herewith entitled Declaration of Trust certify and declare and in and by said instrument have certified and declared that they hold and shall and will hold the following described personal property, to-wit: seven thousand (7,000) shares of the common capital stock of Marathon Paper Mills Company, a Wisconsin corporation, of the par value of Twenty-five Dollars (\$25.00) per share, and any and all proceeds thereof, In Trust. Nevertheless, for the uses and purposes and upon the terms and conditions set forth in said Declaration of Trust, reference to which Declaration of Trust is hereby made for further particulars thereof: Now, Therefore, said George S. Gaylord and Gertrude H. Gaylord to further certify and declare that the trust

created and provided for in said Declaration of Trust was always intended and is intended by said trustors and trustees, George S. Gaylord and Gertrude H. Gaylord, to be and is and shall always be absolutely irrevocable and that this further declaration of said undersigned is and is intended to be and shall always be a part of said Declaration of Trust and is intended to be and shall always be taken with and construed as a part of said Declaration of Trust the same as though this present declaration had been physically incorporated in said Declaration of Trust.

In Witness Whereof, said George S. Gaylord and Gertrude H. Gaylord, said trustors and trustees, have set their hands and seals to this instrument as of this 7th day of November, 1935, at Pasadena, California.

After signing and acknowledging the foregoing instrument, the petitioners left it with their counsel. Thereafter the instrument was recorded in Los Angeles and Calaveras Counties, California, on March 28, 1940, and May 14, 1940, respectively.

[188]

In determining the deficiencies involved herein, the respondent determined that the net income of the trust for the respective years constituted income of the petitioners, as grantors; that since Gaylord had contributed five-sevenths of the total value of the property contributed to the trust, such fractional part of the net income of the trust was taxable to him; and that since Mrs. Gaylord had contributed two-sevenths of the total value of the

property contributed to the trust, such fractional part of the net income of the trust was taxable to her.

OPINION

The petitioners take the position that the Gaylord trust is and always has been an irrevocable trust, that none of the income thereof for the years 1936 through 1939 constituted income to them, or either of them, but that all of such income was the income of their two daughters, share and share alike, and as such was taxable to the daughters. The respondent contends that under the statutes of California the trust was revocable, and that the income of the trust for the years in controversy was taxable to the petitioners in the proportions determined by him.

Prior to 1931, section 2280 of the Civil Code of California provided as follows:

Not revocable. A trust cannot be revoked by the trustor after its acceptance, actual or presumed, by the trustee and beneficiaries, except by the consent of all the beneficiaries, unless the declaration of trust reserves a power of revocation to the trustor, and in that case the power must be strictly pursued.

In 1931, the Legislature of California amended the section to read as follows:

Revocation of trusts. Unless expressly made irrevocable by the instrument creating the trust, every voluntary trust shall be revocable by the trustor by writing filed with the trustee. When a

voluntary trust is revoked by the trustor, the trustee shall transfer to the trustor its full title to the trust estate. Trusts created prior to the date when this act shall become a law shall not be affected hereby.

Accordingly it is the law of California, and has been since the amendment of section 2280 in 1931, that "every voluntary trust" is revocable by the trustor, unless "expressly made irrevocable by the instrument creating the trust," the only exception to that rule being in the case of trusts created prior to the date of the enactment of the amendment. The trust here was created, and the instrument creating it was executed, in 1935, some four years after the enactment of the amendment in question, and the said instrument did not contain any provision making the trust irrevocable. Furthermore, there can be no doubt, we think, that the trust was a voluntary trust. There is some argument to the effect that the petitioners by mutual promises became [189] obligated, one with the other, to make gifts to their daughters and that the trust was not therefore a voluntary trust within the meaning of section 2280 as amended. That argument is in our opinion without merit. The purpose and intention of the petitioners was to make gifts to or for the benefit of their two daughters, and a gift, which is the transfer of something to another without compensation, implies and denotes an act of choice, a voluntary act. The creation of the trust was merely the method for effecting or making the intended gift, and it

takes its voluntary character therefrom. *Touli v. Santa Cruz County Title Co.* (Cal. App.), 67 Pac. (2d) 404, holding that a deed of trust given as security for the repayment of a loan did not fall within the provisions of section 2280, as amended, is not in point. We think it apparent therefore that, if the petitioners are to prevail, they must do so on other grounds.

The record shows, and we have found as a fact, that the petitioners had in mind the making of a complete and irrevocable grant to trust. We also think it apparent that their counsel who drew the trust instrument so understood, and the respondent has conceded that when counsel drew the instrument he did not know of the 1931 amendment of section 2280. The record also shows that as soon as he learned of the amendment he drafted the instrument executed by the petitioners on March 27, 1940, declaring that the trust "is and shall always be absolutely irrevocable and that this further declaration * * * is intended to be and shall always be a part of said Declaration of Trust and is intended to be and shall always be taken with and construed as a part of said Declaration of Trust the same as though this present declaration had been physically incorporated in said Declaration of Trust." Such being the facts, the petitioners cite and rely on section 3399 of the California Code, which provides that when through fraud or mutual mistake of the parties a written contract does not truly express the intention of the parties, it may

be revised to express such intention, in so far as can be done without prejudice to the rights acquired by third persons, in good faith and for value. Whatever the rights of the parties may be with respect to the revision of the instruments under section 3399, and whatever the retroactive effect of such revision, it is of no moment here, since section 3399 has no application to a purely voluntary deed. *Enos v. Stewart*, 138 Cal. 112; 70 Pac. 1005, and *Robertson v. Melville*, 60 Cal. 354; 212 Pac. 723. In *Enos v. Stewart*, the grantee of a voluntary deed defectively executed sought to have it reformed in equity, after the grantor's death, as against the grantor's heir at law. In denying the relief sought, the Supreme Court of California said:

“* * * It is a universal principle of courts of equity that, in all cases where relief is asked by aiding and correcting mistakes in the execution of instruments [190] and powers, the party seeking such relief must stand upon some equity superior to that of the party against whom he asks it. If the equities are equal, the law must prevail, and the court will remain silent and passive. * * * A court of equity interferes to correct a mistake in a written instrument only in furtherance of justice, and to prevent fraud or some injustice. In this case, by refusing to correct the deed, no fraud or injustice is done to appellant. She has lost nothing, because she paid no consideration for the deed. She has been deprived of nothing the law would otherwise give her. It is true, the intention of the

grantor is not carried out; but it would have been equally true if an attempt had been made to make a will, and it had been defective in a vital part. The court could not reform a will, nor make it so that it would comply with the law. In this case the deceased intended to convey the property, but she did not do so. That intention will not now be carried out in favor of one who paid nothing for the conveyance, and against a lawful heir."

In the light of the above pronouncement of the court, it would seem that not only does section 3399 give no support to the contention made here, but in the case of a voluntary deed the mere existence of an unexecuted intention on the part of the donor or grantor creates no rights in the grantee and takes nothing from the grantor, but leaves the grantor the freedom which he theretofore had, as if no such intention had ever existed.

The petitioners further contend that, under the law of California, a valid oral irrevocable trust can be created in personal property, that the Marathon stock was personal property, and that, since they intended to create an irrevocable trust, the trust actually created has at all times subsequent to its inception in 1935 been valid as an oral irrevocable trust. The obvious answer to that contention is that the record fails to show that there was ever any intention to create an oral trust, irrevocable or otherwise, or that any oral trust was, in fact, created. The only trust created was the written trust described in our findings of fact, and it is that

trust, not some other trust, with which we are here concerned.

Finally, the petitioners contend that the respondent is estopped from claiming or asserting that the Gaylord trust was ever revocable. This contention is grounded on the fact that petitioners in 1936 filed their gift tax returns for 1935, in which they referred to the trust as an irrevocable trust, that the tax shown on the returns was paid and has never been refunded, and that the daughters have consistently reported the income from the trust and paid the tax thereon. They also claim to have attached a copy of the trust instrument to each of the gift tax returns. It is contended that the respondent had full knowledge of the character of the trust as early as 1936 and that he should not now be permitted to claim that it was revocable. Estoppel must be specifically pleaded; otherwise it is not an issue in the case. *El Dorado Oil Works*, 46 B. T. A. 994. It has not been pleaded here.

As we read the facts and the law, the petitioners at all times up to [191] the execution of the instrument of March 27, 1940, had and retained the right to revoke the said trust. To hold otherwise would in effect be a rewriting of the California statute or a making of the trust instrument something it was not. We do not possess the power to do either. Since the grantors had the power to revoke the trust during the years before us, the income therefrom is taxable to them. Section 166 of the Revenue Acts of 1936 and 1938, and of the Internal

Revenue Code. The respondent has properly allocated the trust income, five-sevenths to Gaylord and two-sevenths to Mrs. Gaylord. Colonial Trust Co. v. Commisisoner, 111 Fed. (2d) 740.

Issue 2.—Basis for Computing Gain on the
Sale of Stock

FINDINGS OF FACT

About 1911 or 1912, a corporation known as the Menasha Carton Co. was organized and began operations in Menasha, Wisconsin. On July 1, 1917, the outstanding stock of Menasha Carton Co. was 726 shares of common stock, of which 337 shares were owned by Gaylord, 337 shares by S. H. Clinedinst, and the remaining 52 shares by four other individuals. The 337 shares owned by Gaylord had been acquired by him as follows:

Acquired on or before—	Shares	Cost
Mar. 1, 1913	99½	\$9,950.00
Jan. 16, 1914	20	2,000.00
Oct. 20, 1914	94½	9,450.00
Apr. 8, 1915	18	1,800.00
Mar. 31, 1916	100	10,000.00
July 1, 1917	5	1,236.50
Total.....	337	34,436.50

Across the street from the plant of the Menasha Carton Co. was located the Menasha Printing Co., all of the stock of which was owned by Clinedinst. Clinedinst desired to consolidate the assets and businesses of the two corporations into a new cor-

poration, with Gaylord as its manager. It was agreed that Gaylord should purchase sufficient of the stock of the new corporation from Clinedinst to bring his holdings therein up to 40 percent of the outstanding stock. Determination of the basis for consolidation was left to Gaylord. He determined that the consolidation should be effected on the basis of the appraised value of the physical assets, plus the book value of the quick assets of each of the old corporations. Determination of the value of the stock of the two old corporations through the capitalization of current earnings at ten times such earnings (regarded by Gaylord as a conservative rate) would have indicated a substantially higher value for the stock of the old corporations than was indicated on the basis of value of assets.

The new corporation, Menasha Printing & Carton Co., was formed [192] during the later half of 1917, and the consolidation was effected as of July 1 of that year, on the basis determined by Gaylord. The appraised value of the physical assets plus the book value of the quick assets of the Menasha Carton Co. was determined to be \$186,000, while the value of the assets of the Menasha Printing Co. was determined to be \$774,000, making a total of \$960,000 as the value of the assets of the two corporations. For these assets, common and preferred stock of the new corporation was issued on a dollar-for-dollar basis, \$500,000 in common stock, and \$460,000 in preferred stock. The com-

mon stock of the new corporation was divided into 5,000 shares and the preferred stock into 4,600 shares, the stock of each class having a par value of \$100 per share. Of the \$186,000 representing the value of the assets of the Menasha Carton Co., \$86,338.89 was allocable to Gaylord's 337 shares of stock. Based on such value and applying the proportions in which the stock of the new corporation was divided between common and preferred, Gaylord was entitled, for his 337 shares of Carton Co. stock, to 449.6815 shares of common stock and 413.7074 shares of preferred stock. The actual division, however, was \$41,000 for 410 shares of preferred stock and \$45,338.89 for 453.3889 shares of common stock. In addition, Gaylord purchased from Clinedinst sufficient shares of common stock of the new corporation to bring his common stock holdings therein to 1,975 shares. In payment for the stock purchased from Clinedinst, he gave his promissory note for \$152,161.11, which, with the \$45,338.89 representing the value of his shares in the Carton Co. stock against which common stock of the new corporation was issued, brought his total payments for the 1,975 shares of common stock to \$197,500. The fair market value of the common shares acquired in the consolidation was \$100 per share. The note given to Clinedinst was dated August 30, 1917, was due three years after date, and bore interest at the rate of 6 percent per annum. It was paid in full on September 29, 1924. Of the 1,975 shares of common stock of the new corporation so acquired by Gaylord, 1,525 shares

were issued to him under certificate No. 2, dated August 30, 1917, and were put up by him as collateral for the payment of the note to Clinedinst. In his income tax return for 1917, Gaylord did not report any income on the exchange of his 337 shares of Menasha Carton Co. stock for stock in the new corporation.

In 1922 or 1923 Gaylord purchased the remaining interest of Clinedinst in the Menasha Printing & Carton Co. In the meantime, all the preferred stock issued in the 1917 consolidation had been retired. During the interval between the consolidation in 1917 and October 31, 1927, Gaylord sold some small lots of his common stock. In 1925 he received a 100 percent stock dividend on the stock then held, and at October 31, 1927, the parties are in agreement that he owned and held 3,357 shares of such stock. Of the stock so held, 350 shares had [193] been transferred by Gaylord in 1925 to his brother, C. W. Gaylord, for 432 shares of the stock of Robert Gaylord, Inc. In the latter part of 1926 or the early part of 1927, C. W. Gaylord expressed the desire to reacquire the 432 shares of Robert Gaylord, Inc., stock. He wanted the shares for use in connection with a reorganization of his corporation. Petitioner Gaylord agreed to sell the 432 shares for \$300,000, but the offer was not accepted. Thereafter C. W. Gaylord proposed that the previous exchange of 350 shares of Menasha Printing & Carton Co. stock for the 432 shares of the Robert Gaylord, Inc., stock be canceled and that steps be

taken to restore the parties to the position that they would have been in if the exchange had not been made. The "whole arrangement" was to be canceled "as though it had never existed." The offer was accepted and the shares were returned to their original owners, each of the parties paying over any and all dividends which had been received on the respective stocks during the interval.

On October 31, 1927, the Menasha Products Co., such then being the name of the Menasha Printing & Carton Co., was merged with the Marathon Paper Mills Co. In this merger Gaylord received 6,728 shares of the Marathon Paper Mills Co. stock and \$1,038,000 par value of its 5 percent bonds in exchange for his 3,357 shares of common stock of the Menasha Products Co. In December 1929 the Marathon stock was split four shares for one.

On none of the above transactions involving exchanges of stock for stock did petitioner George S. Gaylord report any gain for income tax purposes.

Gaylord, Mrs. Gaylord, and the Gaylord trust reported sales of the following number of shares of common stock in the Marathon Paper Mills Co. in their respective income tax returns for the indicated years:

	Shares Sold			
	1936	1937	1938	1939
Gaylord	4,950	2,800	3,300	2,462
Mrs. Gaylord .....	.....	2,100	400	500
Gaylord trust	4,000	1,600	1,000	400

The gain reported on these sales was computed on a basis of \$8.21 per share. In determining the deficiencies herein, the respondent determined that the correct basis was \$2,835.42 per share, except as to 100 of the shares sold by Gaylord in 1939. The 100 shares were acquired by purchase in 1933 for \$1,700. The 7,000 shares sold by the trust were the shares contributed by the petitioners to the trust in 1935. The 2,000 shares contributed by Mrs. Gaylord to the trust had [194] been given to her by Gaylord in 1930. According to the respondent's determination, the shares sold by Mrs. Gaylord personally had been given to her by Gaylord in February 1932, and that determination is not disputed.

OPINION

The question here is the basis for determining gain or loss to the petitioners on the sale of stock in the Marathon Paper Mills Co. One hundred of the shares sold by Gaylord in 1939 were purchased by him in 1933 for \$1,700, and as to those shares there is no controversy. The remaining shares were obtained in a four-for-one split of shares received by Gaylord in the merger in 1927 of the Menasha Products Co., formerly Menasha Printing & Carton Co., with the Marathon Paper Mills Co. Both parties have treated that merger as a transaction on which gain or loss was not to be recognized for income tax purposes. Consequently, the basis for gain or loss on the stock and bonds received by Gaylord as a result of that merger is the same as

his basis for the 3,357 shares of Menasha Products Co. stock exchanged for the stock and bonds. There is no dispute between the parties as to the method of allocating basis between the Marathon stock and bonds; neither is there any contention that the basis of the Marathon stock sold by Mrs. Gaylord and the trust is different from the basis of Gaylord himself. As a result, once the basis to Gaylord for the 3,357 shares of Menasha Products Co. stock is fixed, determination of the basis of the Marathon Paper Mills Co. shares sold is a matter of mathematical computation.

From the evidence and the agreed items appearing in the respective computations of the parties, it is apparent that the 3,357 shares of Menasha Products Co. stock represent a portion of the 1,975 shares of Menasha Printing & Carton Co. common shares acquired by Gaylord in the consolidation of Menasha Carton Co. and Menasha Printing Co., and by purchase from Clinedinst, in 1917, plus the 100 percent stock dividend thereon in 1925. It is true that Gaylord did purchase some additional shares from Clinedinst in 1923, but the evidence of record does not show the number of shares so purchased or the price paid. The respondent, however, in the computation which he contends is correct, shows a purchase of 50 shares by Gaylord in 1923, which purchase is not shown by the petitioner in his computation; but the respondent's tabulation likewise shows an offsetting sale of 50 shares not shown in petitioner's tabulation, and the net result

is that the parties in their tabulations are in agreement that the shares of Menasha Products Co. disposed of in the 1927 merger represent the unsold portion of the 1,975 shares acquired by Gaylord in 1917 plus the stock dividend in 1925. [195]

The principal difference in the computations of the parties is in the method of arriving at the basis for the 1,975 shares of common stock of the Menasha Printing & Carton Co. acquired by Gaylord in 1917. The petitioners contend that Gaylord's cost of the said 1,975 common shares and the 410 preferred shares was the sum of the \$152,161.11 paid to Clinedinst and \$350,000 claimed as the fair market value of the 337 shares of Carton Co. stock surrendered by Gaylord in the consolidation, or a total of \$502,161.11. From that amount, they deduct \$20,000 as the amount received on retirement of the preferred stock and claim that the remainder represents the basis for the 1,975 shares of Menasha Printing & Carton Co. common stock. From that figure the petitioners by computation arrive at \$8.21 per share as the basis for the Marathon Paper Mills Co. stock sold by them during the taxable years.

The respondent, on the other hand, treats the \$152,161.11 paid to Clinedinst as the cost of 1,525 shares of the common stock, and \$34,436.50, Gaylord's cost of the 337 shares of Carton Co. stock, as the cost to him of the remaining common shares and the preferred shares of the new corporation. Of the \$34,436.50, he allocates \$10,468.70 as the cost of the preferred shares and treats the remaining

\$23,967.80 as the cost of the common shares received in the consolidation, as distinguished from the 1,525 shares acquired from Clinedinst by purchase. From a total cost of \$176,128.91 for the common shares, he has computed a cost basis for the Marathon shares sold by the petitioners during the taxable years of \$2.835½ per share.

The difficulty with the computations of the parties is that both are wrong in certain respects. The revenue act in force at the time of the 1917 consolidation contained no provision for the non-recognition of gain in the case of corporate reorganizations or the carry-over of the basis of the old stock to the new, and the parties so agree. To the extent then, that Gaylord acquired preferred and common shares of stock of the Menasha Printing & Carton Co. for his 337 shares of Menasha Carton Co. stock in the 1917 consolidation, he realized gain or sustained loss equal to the difference between the fair market value of the shares so acquired, and his cost or other basis for the Carton Co. stock exchanged and the basis of the Carton Co. shares surrendered, adjusted by the gain or loss realized or sustained, become the basis to him of the Menasha Printing & Carton Co. shares acquired. In other words, the basis for the Menasha Printing & Carton Co. shares was the same as their fair market value when acquired. One hundred dollars per share was the price fixed by the parties for the new shares in their dealings with each other. That price was arrived at by taking the value as of the date of consolidation of the combined assets of the consolidated corporations. The peti- [196] tioners

contend that such a value was low and was determined upon by Gaylord because it gave him a financial advantage in the consolidation. They argue that a value represented by capitalization of the current earnings of the businesses at the rate of ten for one would give a much higher value and that this higher value is the fair market value. The only evidence in the record as to the current profits of the two businesses is to be found in the oral testimony of Gaylord. He did not testify from the books and did not attempt to give exact figures, but testified from memory and in what he called "round figures." Furthermore, it is to be noted that the year in which the consolidation occurred was a war year, and in such years business profits are likely to be abnormal and the hazards much greater. Clineinst had more at stake in the two corporations than Gaylord, and yet he was willing to deal on the basis of value of assets, which gave an indicated value for the stock of the new corporation of \$100 per share. Considering all of the evidence, we have concluded and found that the fair market value of the preferred and common shares of the Menasha Printing & Carton Co. stock acquired by Gaylord in the consolidation was \$100 per share. As for the shares acquired from Clineinst personally, that was the price actually paid. The facts show that the preferred shares were retired and that only common shares were involved in the 1927 merger with the Marathon Paper Mills Co. It also appears that a 100 percent stock div-

idend was declared by the Menasha Printing & Carton Co. in 1925 and that Gaylord received such a dividend on the common shares which he still owned, and that the shares subsequently used in the 1927 merger were shares originally held, plus the stock dividend shares received in 1925. Dividing the basis of the original shares with the stock dividend shares, we arrive at a basis of \$50 per share for the 3,357 shares used in the 1927 merger, and computation of the basis for the Marathon Paper Mills Co. shares sold by the petitioners and the trust during the taxable years should be computed therefrom.

Issue 3.—Losses Sustained on Demolition of
Building

FINDINGS OF FACT

In March 1938, Gaylord, Mrs. Gaylord, and the Gaylord trust each purchased a one-third interest in a rental property situated in Santa Monica, California, at a total purchase price of \$127,500. The property consisted of a lot 55 feet wide (facing on a street) by 150 feet deep, improved by a one-story brick store building. The building was 55 feet by 80 feet in size, and was divided into three rooms of approximately equal widths. The value of the building was \$15,228.33, which was the portion of the purchase price for the whole property [197] allocable as the cost of the building. Each of the rooms in the building was occupied by separate tenants. At the time of purchase, the petitioners

did not have any intention of demolishing the building or of erecting a new one, but contemplated at most the remodeling of the front, if required by tenants.

One of the tenants, J. Braufman, was conducting a drug business. The lease under which he formerly occupied the premises had expired on March 14, 1938, and he was occupying the premises on a month-to-month basis. The lease of another tenant, Bassett Jewelry Co., expired July 31, 1938, while the lease of the other tenant, Gallen Kamp Stores Co., which operated a shoe store, expired November 30, 1938. About May or June, steps were taken by the petitioner to obtain new leases from the tenants. GallenKamp Stores Co., the first tenant approached, stated that due to expanding business it required more space. While consideration was being given by the petitioners to the remodeling of the building, in order to provide the company with more space, it obtained a lease at a near-by location. Prospective tenants for the GallenKamp space likewise desired more space. Upon investigation, it was found that the partitions in the building were bearing partitions, that to move them would necessitate the complete removal of the roof, which would be almost as costly as to demolish the building and erect a light steel building. In this situation the petitioners decided to obtain agreements from the present tenants extending their occupancy through December 31, 1938. In June 1938 such agreements were made with Braufman and the Bassett Jewelry Co., and

in August with the Gallenkamp Stores Co. A tenant was found who wanted a 27-foot frontage and more depth than the brick building afforded. Two other tenants were found who wanted less frontage than that of the rooms occupied by Braufman and the Bassett Jewelry Co., but more depth.

By late summer or early fall of 1938, the petitioners decided to accept the three prospective tenants, to demolish the brick building, and to erect a new light steel structure on the premises. On January 2, 1939, demolition of the brick building was begun, and a new steel structure was erected. The new building had a frontage of 55 feet, the same frontage as the old brick building, but was 120 feet deep, and cost \$33,000.

In their income tax returns for 1938, Gaylord, Mrs. Gaylord, and the Gaylord trust each took a deduction of \$5,076.11 as their proportionate share of a loss sustained on the brick building. The respondent disallowed the deductions.

OPINION

At the hearing the respondent took the position that the Santa Monica property was acquired by the petitioners and the trust with [198] the intention of razing the building and erecting on the premises a more desirable building and that no part of the purchase price was allocable to the building thereon. On brief, he concedes that this was not the case, and states that all that remains in controversy on this issue is the value of the

building, which he contends was not in excess of \$15,000. The petitioners contend that the value of the building was at least \$15,228.33, the total of the three deductions taken.

On the evidence, we have found that the value of the building at the time of purchase was \$15,228.33 and that such amount was the portion of the total purchase price of the property properly allocable to the building. We accordingly hold for the petitioners on this issue.

Issue 4.—Loss Resulting From Destruction of Pear Orchard

FINDINGS OF FACT

In 1931 Gaylord purchased certain land in Monterey, County, California, bordering on the Carmel River, on which he raised chickens and hogs. In 1935, and principally for the purpose of obtaining a way to get into his ranch from the opposite side of the river, he purchased a 10½-acre tract of land situated on the opposite side and bordering on the river, at a cost of \$900 an acre. Of the tract purchased, about one acre was covered by the river and by a road; one acre was not devoted to any purpose; while on the remainder of the tract were pear and cherry trees. The pear trees had been set out from about 1930 to 1932. Gaylord intended to operate, and did for several years operate, the orchard on a commercial basis, but about 1937 or 1938 the selling price of pears had dropped to \$15.50 to \$16.50 per ton, the lowest price ever

reached in that locality. Operation of the orchard at such prices was unprofitable. During the period of depressed prices approximately one-third of the pear trees in Carmel Valley were taken out.

Since the operation of the pear orchard was not profitable at the prevailing price for pears, and because of his desire to use the land for the growing of alfalfa in connection with his chicken and hog business, Gaylord, in the early part of 1939, removed all of the pear trees except 25. The trees were sawed and used for wood on the ranch. At the time of removal the trees were in full bearing stage and were approaching the years which would normally be their best producing years. Since the removal of the trees the land has been used for the purpose of growing alfalfa.

Ordinarily an acre of pear orchard represents approximately 64 trees. Four hundred and thirty-two pear trees were removed by Gaylord from his property. On his income tax return for 1939, he took a deduction of \$4,320, or 10 per tree, as the amount of loss sustained [199] by reason of the destruction of the pear trees. Of the deduction so claimed, the respondent, in determining the deficiency herein, allowed \$864, or \$2 per tree, and disallowed the remainder.

The loss sustained by Gaylord by reason of the destruction of the pear trees was \$5 per tree, or \$2,160.

OPINION

In 1935 the 10½-acre tract here in question was purchased by Gaylord for \$900 an acre. Most of

the tract was set in pear trees, but the purchase of the land and the orchard was made as a unit and there was no allocation of price between the land and the trees. The orchard was operated commercially for a number of years, but in 1939, due to the drop in the price of pears, Gaylord decided to discontinue the operation of the pear orchard and to convert the land to other uses. As a result, all of the pear trees, with the exception of 25, were destroyed and the land has since been used for the growing of alfalfa in conjunction with his chicken and hog operation adjoining. The evidence from which the basis for determining the loss resulting from the destruction of the pear trees must be determined is sketchy, and in the main represents conclusions drawn by Gaylord from data collected by him with respect to planting, raising, and maintaining a pear orchard and by comparison of his purchase of the pear orchard with two purchases of property in the same locality, one property being a pear orchard and the other having no trees. In the case of those purchases, the land without trees sold for half the price at which the land with the trees was sold. The dates of the sales in those instances were approximately one year from Gaylord's purchase of the property here in question, or one year from the destruction of his pear trees; the record does not show which. Gaylord, in arriving at the deduction claimed, estimated that the number of pear trees destroyed was 432, and the respondent in that connection raises no question.

After considering all of the evidence of record, it is our opinion, and we have found as a fact, that the loss sustained by Gaylord by reason of the destruction of the pear trees in the year 1939 amounted to \$5 per tree, or a total of \$2,160. To that extent, the deduction claimed by him is allowed.

Gaylord assigned as error in his petition the respondent's disallowance of \$467.10 of a deduction of \$517.10 taken in his 1937 return as attorney's fee paid for advice on financial matters. In his answer, the respondent denied error. No evidence was submitted on this issue, and it is not urged on brief. Apparently the issue has been abandoned, and the respondent's disallowance is sustained.

Decisions will be entered under Rule 50. [200]

[Title of Tax Court and Cause.]

MOTION FOR RECONSIDERATION BY THE
TAX COURT OF THE UNITED STATES
OF ITS DECISION PROMULGATED FEB-
RUARY 18, 1944, IN THE ABOVE EN-
TITLED AND REFERRED TO PROCEED-
INGS DETERMNING (1) THAT THE IN-
COME FOR THE YEARS 1936 THROUGH
1939 OF THE TRUST INVOLVED IN SAID
PROCEEDINGS WAS TAXABLE TO THE
ABOVE NAMED PETITIONERS AND (2)
THAT THE BASIS FOR COMPUTING
GAIN ON CERTAIN CORPORATE STOCK
SOLD BY SAID PETITIONERS AND
SAID TRUST DURING THE YEARS 1936
THROUGH 1939 WAS NOT \$8.21 PER
SHARE

To the Honorable the Tax Court of the United
States and to the Honorable Bolon B. Turner,
Judge of said Court:

George S. Gaylord and Gertrude H. Gaylord,
the petitioners in the above entitled and referred to
proceedings, do hereby move the above entitled
court that it reconsider its decision promulgated
February 18, 1944, determining

(1) that the income for the years 1936
through 1939 of the trust created by said peti-
tioners and of [201] which they were trustees,
involved in these proceedings, was taxable to
them for said years, and

(2) That the statutory basis for computing gain on certain shares of the common capital stock of Marathon Paper Mills Company sold by said petitioners and said trust during the years 1936 through 1939 was not \$8.21 per share as contended by said petitioners.

Said motion is made on the records and files in said proceedings and the evidence taken at the hearing in said proceedings held at Los Angeles, California, April 2nd and 3rd, 1943, and on the grounds hereinafter set forth. In what follows herein the petitioner George S. Gaylord is referred to as Mr. Gaylord, the petitioner Gertrude H. Gaylord is referred to as Mrs. Gaylord, the above mentioned decision is referred to as Decision, the pages thereof to the mimeographed copy of said decision furnished by the court to the petitioners, and the transcript of said evidence as Tr.

I.

As to the above referred to determination that the income of the trust referred to in the Commissioner of Internal Revenue's notices of deficiency dated September 17, 1941, and in the respective petitions of said petitioners for redetermination of such deficiency is taxable to them it is respectfully submitted that in so determining the court erred as follows: [202]

(1) The Court disregards the legal effect of the undisputed mutual agreement of Mr. and Mrs. Gaylord for the creation by them of an irrevocable trust.

In its Findings of Fact (Decision, page 4) the court merely states that

“the petitioners decided to set up a trust for the benefit of their two daughters, and in the case of a death of a daughter, then for the benefit of the children of such daughter”

and later in its Opinion (Decision, page 8) adds that

“There is some argument to the effect that the petitioners by mutual promises became obligated, one to the other, to make gifts to their daughters and that the trust was not therefore a voluntary trust within the meaning of section 2280 as amended”

But these mutual promises to create the trust were indisputably proven and, as shown on pages 48 to 50 of Opening Brief of Petitioners, were supported by what in California is a good and valuable consideration and hence constituted a binding contract between the petitioners. It was the contract so formed which changed what would otherwise have been a voluntary trust (as that term is used in equity jurisprudence) into a trust created for a good and valuable consideration. [203]

(2) The Court holds, contrary to California law, “that the trust was a voluntary trust” as that phrase is used in Section 2280 of the Civil Code of California, as amended in 1931.

The court assigns to the word “voluntary” as used in that amendment the meaning “an act of choice, a voluntary act”. (Decision, page 8.) This

misapplication is directly contrary to the construction given to the phrase "voluntary trust" in Section 2280 of said Civil Code, as so amended, in the case of *Touli vs. Santa Cruz Title Company* mentioned on page 8 of the court's decision and discussed at length on pages 43 to 48 of Opening Brief of Petitioners. The *Touli* case was cited by petitioners not because of any relation or bearing of a deed of trust given as security for repayment of a loan to a trust such as that created by the contract of Mr. and Mrs. Gaylord but for the precise interpretation of the phrase "voluntary trust" as used in the amended Section 2280; for the District Court of Appeal of the State of California in its decision in that case expressly and incontrovertibly holds that such phrase "voluntary trust" means a trust created "freely and without a valuable consideration or legal obligation", and explicitly repudiates any such meaning of the word "voluntary" as that now given it on page 8 of the Tax Court's decision. The expression "voluntary trust", says the District Court of Appeal, "was not used in the broad sense found in Section 2216" of the California Civil Code (where "voluntary trust" is defined as "an obligation arising out of a personal confidence reposed [204] in and voluntarily accepted by one for the benefit of another") "but in the restricted sense of a trust created freely and without a valuable consideration or legal obligation". (20 C. A. (2d) 495 at 497.) In the case at bar, the court has, without reason it is submitted, selected the word

“freely” from its context and has defined “voluntary”, as used in the amended Section 2280, by only a part of its true definition and ignored the latter’s most important clause.

Further examination of the California reported decision to date reveals that this exact construction by the District Court of Appeal of the phrase “voluntary trust” so used in the amended Section 2280 remains unchanged or unmodified by any other decision of an appellate court of the State of California and constitutes the standing and accepted interpretation of what is meant by that phrase.

As the mutual agreements of Mr. and Mrs. Gaylord, binding each of them to the other to join with each other in the creation of the trust here involved and to contribute to such trust from his and her respective separate estate, constituted a good and valuable consideration under Section 1605 of the California Civil Code and such pertinent judicial determinations as *Aden vs. City of Vallejo* (1903) 139 Cal. 165, 168, such trust was created for and founded upon a valuable consideration or legal obligation. It was not, therefore, a voluntary trust within the meaning of said Section 2280, as amended. [205] To so hold would not “in effect be a rewriting of the California Statute or a making of the trust instrument something it was not” (Decision, page 11) but a simple following of the application and scope of amended Section 2280 as defined by the California courts.

(3) The Court fails to distinguish between the

effect as to the petitioners themselves of their contract to create the trust and the result thereof as concerns their daughters and their issue, who are the beneficiaries of the trust.

Though neither of the petitioners was obligated to make or become a party to such contract and could just as freely and voluntarily have abstained therefrom as have entered upon it, and though the act of each of them in becoming a party to such contract was "an act of choice, a voluntary act", once they did so contract their relationship to each other changed and became one of binding legal obligation as to each other. The result, however, of such an onerous and binding obligation was, as to the beneficiaries of the trust, a gift for they admittedly gave nothing of value. While the petitioners' "purpose and intention was to make gifts to or for the benefit of their two daughters" and the object of the petitioners' mutual agreements was the benefiting of their daughters and their daughters' children without any compensation or value, except love and affection, moving to the petitioners from such beneficiaries, the important thing that should not be overlooked is the fact [206] that the resulting gift was not the act or donation of one person but the separate acts and donations of each of two persons, neither of whom could have been compelled by the other to make such gift. It was the circumstance that each of them did bind himself and herself legally and effectively to the other to make his and her respective contribution to the

trust—did in fact create a legal obligation or burden in favor of his or her co-trustor—which differentiates the trust at bar from a trust where there is but one trustor who uses that means of making a gift and there is no precedent legal obligation between two or more persons for the making of such trust. The result in each case may be the same, that is, the beneficiary receives a gift; but in the case where there is no precedent agreement there is no valuable consideration or legal obligation involved and there is a "voluntary trust" such as is referred to in Section 2280 of the California Civil Code, as amended; while in the other case where there is such an agreement for or founded upon a valuable consideration or legal obligation between the multiple trustors there is present that valuable consideration or legal obligation which takes the trust from out of the scope of the statute mentioned.

In other words, it is not the resulting gift to the daughters and their issue which must be looked to in the case at bar but rather the mutual and reciprocal agreements of their parents, the contract between them, which must be considered. The court in its decision looks only to the resulting gift and overlooks the precedent legal obligation of Mr. Gaylord to [207] Mrs. Gaylord and of Mrs. Gaylord to Mr. Gaylord whose performance or fulfillment brought the gift into being.

(4) The Court holds, contrary to California law, that Section 3399 of the California Civil Code has no application to the trust at bar.

On page 9 of its decision the court says that that section "has no application to a purely voluntary deed" and cites *Enos vs. Stewart*, 138 Cal. 112, and *Robertson vs. Melville*, 60 Cal. App. (not Cal.) 354. Again, on page 10 of its decision the court makes reference to "the case of a voluntary deed".

From the supposed non-application of Section 3399 to a "voluntary deed" the court apparently draws the conclusion that the statute is likewise inapplicable to the contract and trust of the petitioners. But this conclusion does not follow. In the first place, the original declaration of trust dated November 7, 1935, is more than a mere deed or conveyance such as that involved in the *Enos* case or that involved in the *Robertson* case. Such declaration is also a contract and evidence of a contract between the petitioners, the two trustors therein named, as between themselves and with respect to the beneficiaries provided for in the trust. In the second place, *Enos vs. Stewart* involved the special situation of a deed of gift from a mother to her daughter in disinheritance of the mother's husband. Though the court in its decision of the case at bar, on pages 9 to 10 thereof, quotes at length from the opinion of [208] Commissioner Cooper in the *Enos* case that part of the Commissioner's opinion which is omitted from the midst of such quotation is not without its pertinent significance and explains why the court there declined to reform as against the surviving husband heir the deed to the daughter. Quoting the omitted portion:

"The equities of respondent are, at least, equal to those of appellant. It is the dictate of equity and natural justice that the property of a wife dying without issue should go in part to her surviving husband. This was certainly the view of the legislature in enacting our statute of distributions, for in such case it makes the husband the owner of one-half the property. If this be so, then equity would say to appellant that she should allow the respondent his one-half the property."

The Enos case lays down no rule and expresses no principle which in any manner militates against the position of the petitioners in the case at bar that by virtue of Section 3399 of the California Civil Code the trust created by them is and should be in accordance with their original and unchanged understanding considered absolutely irrevocable by either of them or any party whomsoever. Section 3529 of the California Civil Code provides: "That which ought to have been done is to be regarded as done, in favor of him to whom, and against him from whom, performance is due."

In the Robertson case the District Court of Appeal affirmed a judgment reforming the deed there involved in accord- [209] ance with the original intention of the parties to the contract in pursuance of which the deed was executed. Says Presiding Justice Finlayson in the District Court of Appeal's opinion in that case:

“It may be conceded that equity will not reform a purely voluntary deed, for one who accepts another’s bounty cannot be heard to say that something else should have been given”, citing *Enos vs. Stewart*.

Then, continuing:

“But a valuable consideration, however small, will support a conveyance; and a consideration which will support a conveyance ordinarily is sufficient to entitle the grantee to maintain an action to correct a mutual mistake in the deed.”
(60 Cal. App. 354 at 356-357.)

In the case at bar there was under Section 1605 of the California Civil Code and its settled construction, as pointed out in Opening Brief of Petitioners, such a valuable consideration supporting the mutual agreement or contract of the petitioners pursuant to which the gift in trust was made.

(5) In holding inapplicable to the trust in the case at bar Section 3399 of the California Civil Code the Court overlooks the circumstance that it was not any of the beneficiaries of the trust who were before the Court insisting upon the application of that section but it was the two contracting parties themselves, the petitioners herein, both of whom invoked the protection of that section.

There is here no case of hearing “one who accepts [210] another’s bounty” saying “that something else should be given.” Those who speak here are not donees but donors and contractors, each of whom

was by reason of onerous legal obligation, founded on valuable consideration, bound each to the other, to create the trust and make his or her contribution thereto. It is they who invoke the corrective effect of the section.

(6) The Court in its opinion ignores Section 1640 of the California Civil Code regarding the interpretation of written contracts to express the real intention of the parties (cited on page 53 of Opening Brief of Petitioners) and the provisions of Section 3401 of the same code (cited on page 54 of that brief) which, with Section 3399 above referred to, fully cover the situation of the omission of an express declaration of irrevocability in the original declaration of trust dated November 7, 1935.

As heretofore pointed out, the trust with which this case is concerned is not a mere deed or conveyance but a contract between the petitioners and the beneficiaries, formed pursuant to a precedent onerous contract between the petitioners. But if, wrongfully and contrary to the undisputed facts and circumstances of the case at bar as to the inception of that trust and the subsequent acts and conduct of the petitioners and others with respect thereto, the original declaration of trust be regarded merely as a "voluntary" deed or conveyance, as such term is used in equity jurisprudence, then it still does not follow that it is not subject to reformation or will not be regarded as at all times reformed and reading [211] in accordance

with the positive original intention of the parties thereto. See annotation in 69 A. L. R. at page 423, et seq. There (on page 424) it is declared with respect to the supposed general rule that a court of equity will not reform a conveyance which is voluntary and based on no consideration:

“As is apparent from an examination of the cases which follow, however, no such broad and sweeping rule can be laid down on this subject. Whether or not equity will reform a voluntary conveyance depends upon who seeks the reformation and against whom it is sought, as well as upon other circumstances. For example, it is well settled (see subd. II. c, *infra*) that the grantor is entitled to a reformation of his voluntary deed as against the grantee * * * In its present form and without radical limitations, the general statement set out above, taken with all its implications, is not only valueless as a guide in the determination of any given case, but is positively misleading.”

(7) The Court completely overlooks the effect of the gift tax returns signed and verified February 3, 1936, by the petitioners and thereafter filed by them, wherein they referred to and identified the trust here involved as an irrevocable trust.

In its decision (on page 4) the court finds that the petitioners filed gift tax returns in which they reported the creation of an irrevocable trust and the transfer thereto of [212] the 7000 shares of Marathon Paper Mills Company stock. The only

reference the court makes in its Opinion to these gift tax returns, in which the trust is declared to be an irrevocable trust, is in a brief paragraph on pages 10 to 11 of its decision, wherein the court discusses petitioners' contention that the respondent is estopped from claiming or asserting that the trust was ever revocable. It should not be overlooked that petitioners plead the making, signing, verification and filing of these gift tax returns and introduced evidence thereon, including a certified photographic copy of each such return, not only for the purpose of showing and proving that the respondent Commissioner was so estopped but also, more importantly, for the purpose of showing and proving a declaration in writing signed and verified by the petitioners within less than two months of the execution of the original declaration of trust dated November 7, 1935 (which was acknowledged by the petitioners December 11, 1935) which subsequent written declaration set forth in the gift tax returns would serve as a correction or amendment of the provisions of the trust as set forth in said declaration dated November 7, 1935, expressly making such trust irrevocable, if the same were not irrevocable from its very inception. This matter is fully discussed on pages 57 to 60 of Opening Brief of Petitioners. Obviously, if the trust as originally entered upon was under any theory revocable by the petitioners or either of them it would also be subject to subsequent change or modification by them, and if they in writing did so

change and modify such trust by declaring the same to be irrevocable it would, in any case, be irrevocable from that time on. Viewed therefore as a subsequent addition, change or modifi- [213] cation to the original trust, the formal declaration in writing by the petitioners, set forth in their gift tax returns, that the trust was irrevocable served to make such trust irrevocable in any case from the time of the making of such statement of irrevocability. It has been shown in Opening Brief of Petitioners, nor is it contradicted, that under California law as well as the law of other jurisdictions the instrument creating the trust may consist of any number of documents, which need be neither contemporaneous in time nor have any particular formality, and the trust will speak, as it were, as of and from the time of the making of the last of such instruments completing the trust provisions. That the trust involved in these proceedings was the only trust to which reference was or could be made in the gift tax returns is amply proven by the uncontradicted testimony of Mr. and Mrs. Gaylord given at the hearing. See Tr., pages 52-53, 130-131. In view of their original and unchanged intention to create an irrevocable trust and their understanding that they had formed such a trust, it is immaterial that when they made, signed, verified and filed their gift tax returns, neither Mr. nor Mrs. Gaylord anticipated the need of any additional declaration of irrevocability. The gift tax returns were all a part of the same gen-

eral transaction and in accordance with the same undeviated from intent.

(8) The Court in holding that estoppel is not an issue in this case and in not holding the respondent estopped to claim that the trust was revocable proceeds contrary to law and fact. [214]

Estoppel was another reason for the introduction of the gift tax returns. While it is true that the petitioners contend that respondent had full knowledge of the irrevocable character of the trust as early as 1936 and that he should not now be permitted to claim that it was revocable, it is respectfully submitted that such estoppel was not only sufficiently pleaded in the petitioners' respective petitions herein but further that such issue was definitely before the court at the hearing had in these proceedings and that the case was tried on the theory that among the issues there was this specific issue of estoppel involved. The court cites (Decision, page 11) *Eldorado Oil Works*, 46 B. T. A. 994. But in that case no facts or circumstances were either pleaded in the petition or in evidence before the court on which any estoppel could be founded. Says the court in its opinion there (on page 998):

"The petitioner made representations of fact in its income tax return which were false, were known by the petitioner to be false, and were relied upon by the respondent in allowing deductions which would not otherwise have been allowed."

The court there continues (on page 999) that since "the estoppel was not pleaded and is not even demonstrated, we are unable to consider that there is any issue of estoppel in the case or if there is such an issue that it may be decided to the respondent's [taxpayer's?] advantage". Further in that case, the court emphasizes that even in its brief the taxpayer does not point out precisely what it is that the Commissioner is estopped [215] to deny and declares that "An estoppel must be definite and certain and not vague and uncertain. (46 B. T. A. at page 998 to 999.) So it appears that in the El Dorado Oil Works case not only were there no facts from which an estoppel could arise pleaded but no such facts were proven or offered in evidence. On the contrary, it was the taxpayer which had made in its income tax return representation of facts which were not only false but known to the taxpayer to be false. In the case at bar there was, of course, no misrepresentation whatever in the gift tax returns made, signed, verified and filed by the petitioners early in 1936. In those returns they declared the fact to be that the trust was irrevocable, a fact which was not only believed by them then and there to be true, but which if by reason of some legal technicality it had not theretofore been true was made true by their very fact of so expressing it in writing in those gift tax returns. This significant feature of the case at bar the court has wholly overlooked in its decision.

It is not necessary that for pleading an estoppel

in a proceeding such as this the particular word "estoppel" be used in the petition. All that is required on the part of the petitioning taxpayers, and it is sufficient, is to plead the facts from which the estoppel arises or on which it is based. Petitioner Mr. Gaylord pleaded these facts on page 21 to 23, pages 25 to 26, and page 29, of his petition. Petitioner Gertrude H. Gaylord pleaded the same facts on pages 17 (the sentence at the top of that page commencing on page 16) to 18, 20 to 21 and 23 to 24 of her petition. In each of [216] these petitions there appears, as a part of the statement of the facts as to the creation of the trust, the making, signing, verification and filing of the gift tax returns, and allegations to the effect that the trustors, trustees and beneficiaries of the trust relied at all times upon its irrevocable character, and allegations that each of the daughter beneficiaries of the trust rendered their individual income tax returns of income for the years 1936, 1937, 1938 and 1939, in which returns each of them included her one-half of the net income of the trust for the appropriate year, and paid her individual income taxes on such income. In Mr. Gaylord's petition there were also included allegations as to his payment of the gift tax.

Though the words "estopped" or "estoppel" do not appear, the same if used would amount only to the expression of a conclusion of law and not a statement of fact as required by the rules of this court. Not only were the facts constituting a legal and equitable estoppel so pleaded in both petitions,

but the same were also proven at the hearing and in the exhibits admitted in evidence thereat and now before the court.

The court itself considered that the issue of estoppel was before it. When a photographic copy of Mr. Gaylord's gift tax return was received in evidence there was no objection on respondent's part to its authenticity but counsel for respondent then stated: "if the idea is that a gift tax or payment of a gift tax is material to this case, I object on that ground as to immateriality and irrelevancy. I take it, though, your [217] Honor, that counsel is offering these exhibits because of the statements made therein by Mr. Gaylord in reference to the trust". To which counsel for the petitioners replied "Precisely, statements". Respondent's counsel then said: "On his side of the case, of course, that is pertinent"; as to which the court commented: "I don't think in the light of counsel's opening statement on estoppel and equity you can assume that is the only purpose of the gift tax return" (Tr., pages 55-56.)

Not only are the income tax returns of the daughter beneficiaries for the years involved in evidence but as well the income tax returns of Mr. and Mrs. Gaylord for those years and their fiduciary returns for the trust for the same years; there having been filed with their first fiduciary return for that trust in the early part of the year 1936 a copy of the original declaration of trust dated November 7, 1935.

The Commissioner of Internal Revenue had at all times all of the facts and circumstances of the case before him and must be presumed to know that under the law, even though the declaration of trust originally contained no expression of irrevocability, such expression was properly and adequately supplied in the gift tax returns filed with him referring to this particular trust and to none other, and he has had at all times full knowledge that all parties to said trust, trustors, trustees and beneficiaries, were acting and conducting themselves and relying on the basis of the trust's irrevocability and were paying out money and value on that basis and changing [218] their position accordingly, and that no gift tax need have been paid by Mr. Gaylord in 1936 or at any time if the trust had not been irrevocable. But the Commissioner kept silent, received the benefits of his silence and raised no question as to the irrevocability of the trust until years had passed and he initiated the present controversy. In justice and in equity, in view of all of the circumstances and facts surrounding the conduct of all parties to this trust, the Commissioner should be estopped to claim or assert that the trust ever was revocable, at least, at any rate, at any time from and after making and signing of the gift tax returns.

(9) The Court overlooks evidence before it, both in the declaration of trust dated November 7, 1935, and of the acts and conduct of the trustees, that the trust was intended to be operative under laws of

jurisdictions other than California, in which other jurisdictions the trust even as set forth in said declaration, has always been irrevocable.

The Court in its decision makes no mention of the fact that The Northern Trust Company, of Chicago, Illinois, a corporation foreign to California, was named in the original declaration of trust as a successor trustee of the trust therein created and provided for, nor of the fact, in evidence, that following the sale of the shares of Marathon stock none of the proceeds thereof were ever kept in or [219] came to California except such thereof as were invested in California real estate.

(10) The Court erred in not holding the income derived from the Texas real property to have been income of an irrevocable trust.

Though the Court on page 5 of its decision mentions the fact that "In 1938 the trustees made certain purchases of real estate situate in Texas, totaling about \$90,000.00, and in connection therewith had the trust instrument recorded in four counties of that state", the court nowhere in its decision discloses that it considered in any manner the effect of such investments and recording in a state where the trust was indubitably irrevocable upon the character or ownership of the income derived from property there located. This matter is discussed on pages 62 to 64 of Opening Brief of Petitioners. It is hornbook law that as to real property the law of the situs governs and that a trust of real property is consequently governed by the law of its situs. This being so, none of the income derived

from the Texas real property purchased and owned by the trust could be chargeable to the petitioners, but the same, having been distributed by the trustees to the beneficiaries of the trust, would have to be accounted for by them.

II.

As to the above referred to determination that the statutory basis for computing gain on the common capital stock of Marathon Paper Mills Company was not \$8.21 per share, as [220] contended by the petitioners, it is respectfully submitted that in so determining the court erred as follows:

(1) The Court disregards the positive testimony of the petitioner Mr. Gaylord that the consolidation of Menasha Carton Company and Menasha Printing Company was effected on the basis of the respective appraised values of the physical assets plus the book values of the quick assets of each of the two corporations used not as an indication or determination of real or actual values involved but rather as a standard or measuring stick of Mr. Gaylord's and Mr. Clinedinst's relative and respective interests.

In its findings the court does mention the fact that "Determination of the value of the stock of the two old corporations through the capitalization of current earnings at ten times such earnings (regarded by Gaylord as a conservative rate) would have indicated a substantially higher value for the stock of the old corporations than was indicated on the basis of value of assets". (Decision, page 12) But though the court may be correct in stating that

“the basis for the Menasha Printing & Carton Company shares was the same as their fair market value when acquired” (Decision, page 18) it is in error, it is submitted, when it further states that “one hundred dollars per share was the price fixed by the parties for the new shares in their dealings with each other”, and that “That price was arrived at by taking the value as of [221] the date of consolidation of the combined assets of the consolidated corporations”. (Decision, pages 18 to 19.) While it is true that petitioners contend that such value was too low and that “a value represented by capitalization of the current earnings of the businesses at the rate of ten for one would give a much higher value and that this higher value is the fair market value” (Decision, page 19) this contention is based on the uncontradicted testimony of Mr. Gaylord who testified as follows:

“there was a very definite consideration besides what appeared on the books. The profits of the Menasha Carton Company for the first seven months of 1917 were \$56,000, which on a 12-months’ basis would be \$96,000 made on assets of net worth of \$186,000. The Printing Company made the first six months of 1917 \$187,000. These, of course, are all in round figures. The combined profits at the end of the year 1917, that is, first operated separately for the six months of 1917, plus the profits for the new company which was a combination of the two old ones, was \$315,000 of net profits for the

year 1917." (Tr. page 83) * * * There was one other consideration, and a very important one to me, most important. If we had consolidated these two companies on the basis of earnings, the most conservative of which might be called ten times earnings as the value of the stock, and by my prearranged [222] agreement with Mr. Clinedinst whereby I was to acquire 40 per cent of the common stock less what I would get by virtue of my Menasha Carton Company, put into the combination, I would have been signing a note not for \$152,000 but for closer to \$1,000,000, which made quite a different consideration to me, and there comes in the intangible consideration, namely, that Mr. Clinedinst was satisfied that I was the man to run the business and I was the one that dictated the terms of the consolidation, and I dictated them, of course, as much to my advantage as I could.

"Consequently, we took the assets as the measuring stick, not the earnings power, and for that reason alone, so that when we got through instead of having \$600 a share value in the Menasha Printing and Carton Company stock, in round figures, as would have been the case if we had used ten for one earning capacity to place a valuation on that stock, we had consequently a very low valuation, which was all, of course, to my financial advantage at that time." (Tr., page 85.)

In other words, the appraised values of the physical

assets and book values of the quick assets furnished merely a measuring stick for the respective proportions in which Mr. Clinedinst and Mr. Gaylord were to participate in the stock of the new corporation, Menasha Printing & Carton Company, but not as any indication of the real values involved on either [223] side.

It is manifest that, considering its earnings at the time of the consolidation, Mr. Gaylord's shares of the Menasha Carton Company which were involved had a value much higher than that indicated by the values of the physical assets and the book value of the quick assets of that company, which was a going concern. To hold otherwise and limit fair market value to the two elements of physical value and book value of quick assets is to take a very unrealistic view of the situation. While it is true that the only evidence in the record as to the current profits of the two businesses involved in this consolidation is to be found in the oral testimony of Mr. Gaylord, there is no reason why he should be disbelieved nor was his testimony in any manner impeached or contradicted. Clinedinst's Menasha Printing Company also had very large profits, and considering the fact that two profitable businesses were to be combined, his and Mr. Gaylord's, there was every reason why both these principal owners and parties interested should have been willing in dealing with each other on the bases of value of assets, to use as a formula for the consolidation the totals of the respective values of

physical assets and book values of quick assets of each company entering into the consolidation not as an indicator of real or actual or fair value but as a measure of proportion for stock participation in the new consolidated company. While the consolidation took place in 1917, a war year, there is nothing in the evidence to indicate that the business profits [224] of either of the companies was abnormal or the hazards greater than at other times. There is nothing in the record to contradict Mr. Gaylord's testimony (Tr., page 202) that the fair market value of his interest, his stock in the Menasha Carton Company, which he contributed to the reorganization of it and Menasha Printing Company into Menasha Printing & Carton Company was \$350,000.00 as of July 1, 1917.

(2) The Court erred in finding that in 1922 or 1923 Mr. Gaylord purchased the remaining interest of Clinedinst in the Menasha Printing & Carton Company.

This finding is without evidence in the record.

(3) The Court overlooks the fact that under Section 202 (a) of the 1926 Act the cost to Mr. Gaylord of the 352 shares of Menasha Printing & Carton Company stock which he received from his brother C. W. Gaylord in 1927 in exchange for 432 shares of Robert Gaylord Incorporated, was the market or true or actual value of such shares of Menasha Printing and Carton Company in August, 1927.

Though, as found by the court (Decision, pages 14 to 15) the "whole arrangement" whereby Mr. Gay-

lord acquired from his brother C. W. Gaylord in 1925 the above mentioned shares of Robert Gaylord, Incorporated, in exchange for 350 shares of Menasha Printing & Carton Company stock, was, as between them, cancelled "as though it had never existed" the transaction was, nevertheless, taxable, though not at the [225] time so considered by the parties thereto. The then value of the above mentioned 352 shares of Menasha Printing & Carton Company was \$200,762.21. (Tr., page 81; Exhibit H to petitions.)

(4) The Court apparently treats the \$152,161.11 paid to Clinedinst as the cost of 1525 shares of the common stock of the Menasha Printing & Carton Company.

But the evidence shows that his figure of \$152,161.11 was not the sole cost of such shares. This amount was a part of the whole transaction for the consolidation of the Menasha Printing Company with the Menasha Carton Company and not separately and distinctly a payment for such common shares. What has been hereinbefore pointed out as to the method of formula used in effecting the consolidation and determining the respective values

involved for participation of Mr. Clinedinst and Mr. Gaylord therein applies here.

Respectfully submitted,

THOMAS A. J. DOCKWEILER

whose address is 1035 I. N. Van Nuys Building,
210 West Seventh Street, Los Angeles, California.

JAMES W. BONTEMS, C.P.A.

whose post office address is 215 West Sixth Street,
Los Angeles, California.

Attorneys for said petitioners

[Endorsed]: T.C.U.S. Filed Mar. 17, 1944.

[Endorsed]: T.C.U.S. Denied Mar. 18, 1944.

[226]

The Tax Court of the United States

Docket No. 109273

GERTRUDE H. GAYLORD,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

RESPONDENT'S COMPUTATION FOR
ENTRY OF DECISION

The attached proposed computation is submitted, on behalf of the respondent, to the Tax Court of the United States, in compliance with its opinion determining the issues in this proceeding.

This computation is submitted in accordance with the opinion of the Court, without prejudice to the respondent's right of contest the correctness of the decision entered herein by the Court, pursuant to the statutes in such cases made and provided.

(Signed)

J. P. WENCHEL, BHN

Chief Counsel, Bureau of Internal Revenue

Of Counsel:

B. H. NEBLETT,

Division Counsel.

HAROLD D. THOMAS,

B. M. COON,

Special Attorneys, Bureau of Internal Revenue.

BMC/mm 5/10/44 [227]

C-TS:PD

LA:KD

TC-Recomp.

RECOMPUTATION STATEMENT

In re: George S. Gaylord
639 Rosemont Avenue
Pasadena, California

Docket No. 109138

INCOME TAX LIABILITY

Year	Tax Liability	Tax Assessed	Deficiency
1936	\$27,476.91	\$ 9,650.54	\$17,826.37
1937	21,685.91	9,658.84	12,029.07
1938	14,957.95	6,746.10	8,211.85
1939	15,548.08	6,327.02	9,221.06
Total	\$79,668.85	\$32,380.50	\$47,288.35

The attached schedules of income tax liabilities have been made under Rule 50 pursuant to the opinion of The Tax Court of the United States promulgated February 18, 1944, wherein it was held.

(a) That income of the Gaylord trust was taxable to the grantors, petitioner and his wife, during the taxable years 1936 through 1939, as contended by the respondent.

(b) That the basis for computing gain or loss on certain shares of corporate stock sold by petitioner and the trust be revised.

(c) That the amounts deducted by the petitioners, George S. and Gertrude H. Gaylord and trust, as losses sustained on the removal of a building, are allowable.

(d) That an additional loss is allowable with respect to the destruction of a pear orchard.

The respondent was sustained in the disallowance of a deduction of \$467.10, claimed in the year 1937 as an attorney's fee for advice on financial matters. The issue with respect to the partial disallowance of a loss for the year 1939, claimed to have resulted from the destruction by storm of ornamental trees, was abandoned at the hearing.

Taxable Year Ended December 31, 1936

Schedule 1

Net Income

Net income disclosed by the statutory notice of deficiency dated September 17, 1941.....	\$ 91,806.12
As adjusted in accordance with the Court's opinion..	91,788.93
Difference (decrease)	\$ 17.19

Schedule 2

Explanation of Adjustment

The Tax Court has held that 3357 shares of Menasha Carton Company stock, represented in the 1927 merger with Marathon Paper Mills Company, had a basis of \$50.00 a share, and that computation of the basis for Marathon Paper Mills Company shares sold by petitioner during the taxable years 1936 through 1939 should be computed therefrom. When recomputed upon such basis, the latter stock has a value of \$0.00734 a share less at January 1, 1936, than was determined in the statutory notice as disclosed by Exhibit A, attached hereto.

Accordingly, capital gain on sales of the afore-said stock has been decreased as follows:

	Reflected in Individual Income	Reflected in Trust Income
4950 shares at \$0.00734.....	\$36.33	
4000 shares at \$0.00734.....		\$29.36
Taken into account at 30%.....	\$10.90	\$ 8.81
Share in trust, 5/7.....		\$ 6.29
Total decrease in capital gain....		\$17.19

Schedule 3
Computation of Tax

Net income, schedule 1	\$ 91,788.93
Less: Personal exemption	\$2,500.00
Credit for dependent	400.00
	<u>2,900.00</u>
Surtax net income	\$ 88,888.93
Less: Earned income credit	300.00
	<u>300.00</u>
Balance subject to normal tax.....	\$ 88,588.93
	<u> </u>
Normal tax at 4% on \$88,588.93	\$ 3,543.56
Surtax on \$88,888.93	23,933.35
	<u> </u>
Total tax	\$ 27,476.91
Tax assessed, account No. 200178	9,650.54
	<u> </u>
Deficiency	\$ 17,826.37
	<u> </u>

[229]

Taxable Year Ended December 31, 1937

Schedule 4
Net Income

Net income disclosed by the statutory notice of deficiency dated September 17, 1941	\$ 81,159.49
As adjusted in accordance with the Court's opinion	81,150.81
	<u> </u>
Difference (decrease)	\$ 8.68
	<u> </u>

Schedule 5

Explanation of Adjustment

Refer to explanation in schedule 2 of this statement. Capital gain has been decreased as follows:

	Reflected in Individual Income	Reflected in Trust Income
2800 shares at \$0.00734.....	\$20.55	
1600 shares at \$0.00734.....		\$11.74
Taken into account at 30%.....	\$ 6.17	\$ 3.52
Share in trust, 5/7.....		\$ 2.51
Total decrease in capital gain....		\$ 8.68

Schedule 6

Computation of Tax

Net income, schedule 4	\$ 81,150.81
Less: Personal exemption	\$2,500.00
Credit for dependent	400.00 2,900.00
Surtax net income	\$ 78,250.81
Less: Earned income credit	300.00
Balance subject to normal tax.....	\$ 77,950.81
Normal tax at 4% on \$77,950.81.....	\$ 3,118.03
Surtax on \$78,250.81	18,577.88
Total tax	\$ 21,695.91
Less: Income tax paid at source	10.00
Net tax liability	\$ 21,685.91
Tax assessed, account No. 809480	9,656.84
Deficiency	\$ 12,029.07

Taxable Year Ended December 31, 1938

Schedule 7

Net Income

Net income disclosed by the statutory notice of deficiency dated September 17, 1941.....\$ 75,146.75
 As adjusted in accordance with the Court's opinion 66,430.12

Difference (decrease)\$ 8,716.63

Reductions in net income:

(a) Income from trust decreased\$ 3,628.41
 (b) Long term capital gain decreased 12.11
 (c) Loss on demolition of building (reversed)..... 5,076.11

Total\$ 8,716.63

Schedule 8

Explanation of Adjustments

(a) Income from the Gaylord Trust has been adjusted in accordance with the Court's opinion to the effect that long-term capital gain has been reduced for change in stock basis, and the loss on demolition of a building in Santa Monica, California, has been allowed in the amount of \$5,076.11.

The adjustment was determined as follows:

Net income of trust, statutory notice.....\$ 25,304.53
 Less: Loss allowable (Court's opinion)....\$5,076.11

•Long-term capital gain reduced
 (1000 shares at \$0.00734—taken
 into account at 50%) 3.67 5,079.78

Net income of trust as adjusted.....\$ 20,224.75

Petitioner's portion, 5/7\$ 14,446.25
 Previously included 18,074.66

Decrease\$ 3,628.41

•See explanation in schedule 2, herewith.

(b) Long-term capital gain on the sale of 3300 shares of Marathon Paper Mills Company common stock has been reduced by reason of an increase in cost basis from \$2.83542 to \$2.84276 a share, or \$24.22, of which amount, 50% has been taken into account. Refer to explanation in schedule 2.

(c) The Tax Court has held that the demolition loss of \$5,076.11 claimed by the petitioner in his return is allowable. A like adjustment has been made for the Gaylord trust. See explanation (a) of this schedule. [231]

Schedule 9

Computation of Alternative Tax

Net income, schedule 7	\$ 66,430.12
Less: Net long-term capital gain (schedule 10).....	56,293.94
<hr/>	
Ordinary net increase	\$ 10,136.18
Less: Personal exemption	2,500.00
<hr/>	
Surtax net income	\$ 7,636.18
Less: Earned income credit	300.00
<hr/>	
Balance subject to normal tax.....	\$ 7,336.18
<hr/>	
Normal tax at 4% on \$7,336.18	\$ 293.45
Surtax on \$7,636.18	161.81
<hr/>	
Partial tax	\$ 455.26
Add: 30% of net long-term capital gain.....	16,888.18
<hr/>	
Total alternative tax	\$ 17,343.44
<hr/>	

Computation of Tax Under Sections 11 and 12

Net income, schedule 7	\$ 66,430.12
Less: Personal exemption	2,500.00
Surtax net income	\$ 63,930.12
Less: Earned income credit	300.00
Balance subject to normal tax	\$ 63,630.12
Normal tax at 4% on \$63,630.12.....	\$ 2,545.20
Surtax on \$63,930.12	12,412.75
Total tax under sections 11 and 12.....	\$ 14,957.95
Alternative tax	\$ 17,343.44
Tax liability (lesser amount)	\$ 14,957.95
Tax assessed, account No. 805280.....	6,746.10
Deficiency	\$ 8,211.85

Schedule 10

Long-term Capital Gain

	Individual	Trust-5/7	Total
Reported in return	\$36,731.48	\$ 8,789.64	\$45,521.12
Increase, statutory notice	8,868.06	1,919.49	10,787.55
Decrease, schedule 8(a) and (b)	(12.11)	(2.62)	(14.73)
Total	\$45,587.43	\$10,706.51	\$56,293.94

Taxable Year Ended December 31, 1939

Schedule 11

Net Income

Net income disclosed by the statutory notice of deficiency dated September 17, 1941.....	\$ 70,922.89
As adjusted in accordance with the Tax Court's opinion	69,617.17
Difference (decrease)	\$ 1,305.72
Reductions in net income:	
(a) Income from trust decreased	\$ 1.05
(b) Long-term capital gain decreased	8.67
(c) Farm loss increased	1,296.00
Total	\$ 1,305.72

Schedule 12

Explanation of Adjustments

(a) and (b) Refer to explanation in schedule 2 of this statement. Long-term capital gains have been decreased as follows:

	Reflected in Individual Income	Reflected in Trust Income
2362 shares at \$0.00734.....	\$17.34	
400 shares at \$0.00734.....		\$2.94
Taken into account at 50%.....	\$ 8.67	\$1.47
Share in trust, 5/7.....		\$1.05

(c) The Tax Court has held that the farm loss sustained by petitioner on the destruction of 432 pear trees, was \$5.00 a tree, or a total of \$2,160.00. In his return, the petitioner claimed \$4,320.00 for

such loss, of which amount \$864.00 was allowed in the statutory notice. The additional amount of \$1,296.00 has therefore been allowed.

Schedule 13

Computation of Tax Under Sections 11 and 12

Net income, schedule 11	\$ 69,617.17
Less: Personal exemption	2,500.00
<hr/>	
Surtax net income	\$ 67,117.17
Less: Earned income credit	300.00
<hr/>	
Balance subject to normal tax	\$ 66,817.17
<hr/>	
Normal tax at 4% on \$66,817.17	\$ 2,672.69
Surtax on \$67,117.17	13,655.70
<hr/>	
Total tax under sections 11 and 12	\$ 16,328.39
<hr/>	

[233]

Computation of Alternative Tax

Net income, schedule 11	\$ 69,617.17
Less: Long-term capital gain (schedule 14)	40,330.43
<hr/>	
Ordinary net income	\$ 29,286.74
Less: Personal exemption	2,500.00
<hr/>	
Surtax net income	\$ 26,786.74
Less: Earned income credit	300.00
<hr/>	
Balance subject to normal tax	\$ 26,486.74
<hr/>	
Normal tax at 4% on \$26,486.74	\$ 1,059.47
Surtax on \$26,786.74	2,389.48
<hr/>	
Partial tax	\$ 3,448.95
Add: 30% on long-term capital gain	12,099.13
<hr/>	
Total alternative tax	\$ 15,548.08
<hr/>	

Total tax liability (lesser amount).....	\$ 15,548.08
Tax assessed, account No. 852592	6,327.02
Deficiency	<u>\$ 9,221.06</u>

Schedule 14
Long-term Capital Gain

	Individual	Trust-5/7	Total
Reported in return	\$29,694.55	\$3,969.91	\$33,664.46
Increase, statutory notice	5,907.89	767.80	6,675.69
Decrease, schedule 11(a) and (b)	(8.67)	(1.05)	(9.72)
Total	<u>\$35,593.77</u>	<u>\$4,736.66</u>	<u>\$40,330.43</u>

[234]

EXHIBIT A

Marathon Paper Mills Company Bond and Stock
Received October 31, 1927 in Exchange for
3,357 Shares of Menasha Carton Company
Stock

Value of 3,357 shares at \$50.00 a share (Court's opinion)	<u>\$167,850.00</u>
6,795 shares common stock for 46.033% of \$167,850.00	\$ 77,266.39
Basis per share of stock.....	\$11.37106
10/31/27 (767) shares sold at	\$11.37106 (8,721.60)
6028 shares at	\$11.37106 \$ 68,544.79
12/ 2/29 18084 shares for 4 for 1 split-up	0
24112 shares at	\$ 2.84276 \$ 68,544.79

2/9/32	(5000) shares gift to Gertrude		
	H. Gaylord at	\$ 2.84276	(14,213.80)
	19,412 shares at	\$ 2.84276	\$ 54,330.99
11/35	(700) shares sold at	\$ 2.84276	(1,989.93)
	18,412 shares at	\$ 2.84276	\$ 52,341.06
11/7/35	(5000) shares to Gaylord		
	Trust at	\$ 2.84276	(14,213.80)
	13,412 shares remaining at	\$ 2.84276	\$ 38,127.26
	Basis per one share of stock	\$	2.84276
	Basis per share, statutory notice		2.83542
	Increase in basis per share	\$	0.00734

[Endorsed] T.C.U.S. Filed May 17, 1944. [235]

The Tax Court of the United States

Docket No. 109138

GEORGE S. GAYLORD,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

RESPONDENT'S REVISED COMPUTATION FOR ENTRY OF DECISION

The attached proposed revised computation is submitted, on behalf of the respondent, to the Tax Court of the United States, in compliance with its opinion determining the issues in this proceeding.

This revised computation is submitted in accordance with the opinion of the Court, without prejudice to the respondent's right to contest the correctness of the decision entered herein by the Court, pursuant to the statutes in such cases made and provided.

(Signed)

J. P. WENCHEL, BHN

Chief Counsel, Bureau of Internal Revenue

Of Counsel:

B. H. NEBLETT,

Division Counsel.

EARL C. CROUTER,

B. M. COON,

Special Attorneys, Bureau of Internal Revenue. [236]

RECOMPUTATION STATEMENT

In re: George S. Gaylord

639 Rosemont Avenue
Pasadena, California

Docket No. 109138

Income Tax Liability

Year	Tax Liability	Tax Assessed	Deficiency
1936	\$27,476.91	\$ 9,650.54	\$17,826.37
1937	21,685.91	9,656.84	12,029.07
1938	14,957.95	6,746.10	8,211.85
1939	15,533.84	6,327.02	9,206.82
Total	\$79,654.61	\$32,380.50	\$47,274.11

The attached schedules of income tax liabilities have been made under Rule 50 pursuant to the opinion of The Tax Court of the United States promulgated February 18, 1944, wherein it was held:

(a) That income of the Gaylord trust was taxable to the grantors, petitioner and his wife, during the taxable years 1936 through 1939, as contended by the respondent.

(b) That the basis for computing gain or loss on certain shares of corporate stock sold by petitioner and the trust be revised.

(c) That the amount deducted by the petitioners, George S. and Gertrude H. Gaylord and trust, as losses sustained on the removal of a building, are allowable.

(d) That an additional loss is allowable with respect to the destruction of a pear orchard.

The respondent was sustained in the disallowance of a deduction of \$467.10, claimed in the year 1937 as an attorney's fee for advice on financial matters. The issue with respect to the partial disallowance of a loss for the year 1939, claimed to have resulted from the destruction by storm of ornamental trees, was abandoned at the hearing.

[237]

Taxable Year Ended December 31, 1936

Schedule 1

Net Income

Net income disclosed by the statutory notice of deficiency dated September 17, 1941.....	\$ 91,808.12
As adjusted in accordance with the Court's opinion	91,788.93
	<hr/>
Difference (decrease)	\$ 17.19
	<hr/>

Schedule 2

Explanation of Adjustment

The Tax Court has held that 3357 shares of Menasha Carton Company stock, represented in the 1927 merger with Marathon Paper Mills Company, had a basis of \$50.00 a share, and that computation of the basis for Marathon Paper Mills Company shares sold by petitioner during the taxable years 1936 through 1939 should be computed therefrom. When recomputed upon such basis, the latter stock has a value of \$0.00734 a share less at January 1, 1936, than was determined in the statutory notice as disclosed by Exhibit A, attached hereto.

Accordingly, capital gain on sales of the afore-said stock has been decreased as follows:

	Reflected in Individual Income	Reflected in Trust Income
4950 shares at \$0.00734.....	\$36.33	
	<hr/>	
4000 shares at \$0.00734.....		\$29.36
		<hr/>
Taken into account at 30%.....	\$10.90	\$ 8.81
	<hr/>	<hr/>
Share in trust, 5/7.....		\$ 6.29
		<hr/>
Total decrease in capital gain....		\$17.19
		<hr/>

Schedule 3
Computation of Tax

Net income, schedule 1	\$ 91,788.93
Less: Personal exemption	\$2,500.00
Credit for dependent	400.00 2,900.00
	<hr/>
Surtax net income	\$ 88,888.93
Less: Earned income credit	300.00
	<hr/>
Balance subject to normal tax	\$ 88,588.93
	<hr/>
Normal tax at 4% on \$88,588.93.....	\$ 3,543.56
Surtax on \$88,888.93	23,933.35
	<hr/>
Total tax	\$ 27,476.91
Tax assessed, account No. 200178.....	9,650.54
	<hr/>
Deficiency	\$ 17,826.37
	<hr/>

[238]

Taxable Year Ended December 31, 1937

Schedule 4
Net Income

Net income disclosed by the statutory notice of de- ficiency dated September 17, 1941.....	\$ 81,159.49
As adjusted in accordance with the Court's opinion....	81,150.81
	<hr/>
Difference (decrease)	\$ 8.68
	<hr/>

Schedule 5

Explanation of Adjustment

Refer to explanation in schedule 2 of this statement. Capital gain has been decreased as follows:

	Reflected in Individual Income	Reflected in Trust Income
2800 shares at \$0.00734.....	\$20.55	
1600 shares at \$0.00734.....		\$11.74
Taken into account at 30%.....	\$ 6.17	\$ 3.52
Share in trust, 5/7.....		\$ 2.51
Total decrease in capital gain		\$ 8.68

Schedule 6

Computation of Tax

Net income, schedule 4	\$ 81,150.81
Less: Personal exemption	\$2,500.00
Credit for dependent	400.00
	2,900.00
Surtax net income	\$ 78,250.81
Less: Earned income credit	300.00
Balance subject to normal tax	\$ 77,950.81
Normal tax at 4% on \$77,950.81	\$ 3,118.03
Surtax on \$76,250.81	18,577.88
Total tax	\$ 21,695.91
Less: Income tax paid at source	10.00
Net tax liability	\$ 21,685.91
Tax assessed, account No. 809480	9,656.84
Deficiency	\$ 12,029.07

Taxable Year Ended December 31, 1938

Schedule 7

Net Income

Net income disclosed by the statutory notice of deficiency dated September 17, 1941.....	\$ 75,146.75
As adjusted in accordance with the Court's opinion	66,430.12
Difference (decrease)	\$ 8,716.63
<hr/>	
Deductions in net income:	
(a) Income from trust decreased	\$ 3,628.41
(b) Long-term capital gain decreased.....	12.11
(c) Loss on demolition of building (reversed).....	5,076.11
Total	\$ 8,716.63

Schedule 8

Explanation of Adjustments

(a) Income from the Gaylord Trust has been adjusted in accordance with the Court's opinion to the effect that long-term capital gain has been reduced for change in stock basis, and the loss on demolition of a building in Santa Monica, California, has been allowed in the amount of \$5,076.11.

The adjustment was determined as follows:

Net income of trust, statutory notice.....	\$ 25,304.53
Less: Loss allowable (Court's opinion)....	\$5,076.11
*Long-term capital gain reduced (1000 shares at \$0.00734—taken into account at 50%.....	3.67 5,079.78
Net income of trust as adjusted.....	\$ 20,224.75
Petitioner's portion 5/7	\$ 14,446.25
Previously included	18,074.66
Decrease	\$ 3,628.41

*See explanation in schedule 2, herewith.

(b) Long-term capital gain on the sale of 3300 shares of Marathon Paper Mills Company common stock has been reduced by reason of an increase in cost basis from \$2.83542 to \$2.84276 a share, or \$24.22, of which amount, 50% has been taken into account. Refer to explanation in schedule 2.

(c) The Tax Court has held that the demolition loss of \$5,076.11 claimed by the petitioner in his return is allowable. A like adjustment has been made for the Gaylord trust. See explanation (a) of this schedule. [240]

Schedule 9 Computation of Alternative Tax

Net income, schedule 7	\$ 66,430.12
Less: Net long-term capital gain (schedule 10)	56,293.94
<hr/>	
Ordinary net income	\$ 10,136.18
Less: Personal exemption	2,500.00
<hr/>	
Surtax net income	\$ 7,636.18
Less: Earned income credit	300.00
<hr/>	
Balance subject to normal tax.....	\$ 7,336.18
<hr/>	
Normal tax at 4% on \$7,336.18.....	\$ 293.45
Surtax on \$7,636.18	161.81
<hr/>	
Partial tax	\$ 455.26
Add: 30% of net long-term capital gain	16,888.18
<hr/>	
Total alternative tax	\$ 17,343.44
<hr/>	

Computation of Tax Under Section 11 and 12

Net income, schedule 7.....	\$ 66,430.12
Less: Personal exemption	2,500.00
Surtax net income	\$ 63,930.12
Less: Earned income credit	300.00
Balance subject to normal tax	\$ 63,630.12
Normal tax at 4% on \$63,630.12.....	\$ 2,545.20
Surtax on \$63,930.12	12,412.75
Total tax under sections 11 and 12.....	\$ 14,957.95
Alternative tax	\$ 17,343.44
Tax Liability (lesser amount)	\$ 14,957.95
Tax assessed, account No. 805280	6,746.10
Deficiency	\$ 8,211.85

Schedule 10

Long-Term Capital Gain

	Individual	Trust-5/7	Total
Reported in return	\$36,731.48	\$ 8,789.64	\$45,521.12
Increase, statutory notice	8,868.06	1,919.49	10,787.55
Decrease, schedule 8(a) and (b)	(12.11)	(2.63)	(14.73)
Total	\$45,587.43	\$10,706.51	\$56,293.94

Taxable Year Ended December 31, 1939

Schedule 11

Net Income

Net income disclosed by the statutory notice of deficiency dated September 17, 1941	\$ 70,922.89
As adjusted in accordance with the Tax Court's opinion	69,617.17
Difference (decrease)	\$ 1,305.72

Reductions in net income:

(a) Income from trust decreased	\$ 1.05
(b) Long-term capital gain decreased.....	8.67
(c) Farm loss increased	1,296.00
Total	\$ 1,305.72

Schedule 12

Explanation of Adjustments

(a) and (b) Refer to explanation in schedule 2 of this statement. Long-term capital gains have been decreased as follows:

	Reflected in Individual Income	Reflected in Trust Income
2362 shares at \$0.00734.....	\$17.34	
400 shares at \$0.00734.....		\$ 2.94
Taken into account at 50%	\$ 8.67	\$ 1.47
Share in trust, 5/7.....		\$ 1.05

(c) The Tax Court has held that the farm loss sustained by petitioner on the destruction of 432 pear trees was \$5.00 a tree, or a total of \$2,160.00. In his return the petitioner claimed \$4,320.00 for

such loss, of which amount \$864.00 was allowed in the statutory notice. The additional amount of \$1,296.00 has therefore been allowed.

Schedule 13

Computation of Tax Under Sections 11 and 12

Net income, schedule 11	\$ 69,617.17
Less: Personal exemption	2,500.00
Surtax net income	\$ 67,117.17
Less: Earned income credit	300.00
Balance subject to normal tax.....	\$ 66,817.17
Normal tax at 4% on \$66,817.17.....	\$ 2,672.69
Surtax on \$67,117.17	13,655.70
Total tax under sections 11 and 12.....	\$ 16,328.39

[242]

Computation of Alternative Tax

Net income, schedule 11	\$ 69,617.17
Less: Long-term capital gain (schedule 14).....	40,330.43
Ordinary net income	\$ 29,286.74
Less: Personal exemption	2,500.00
Surtax net income	\$ 26,786.74
Less: Earned income credit	300.00
Balance subject to normal tax.....	\$ 26,486.74
Normal tax at 4% on \$26,486.74.....	\$ 1,059.47
Surtax on \$26,786.74	2,389.48
Partial tax	\$ 3,448.95
Add: 30% on long term capital gain	12,099.13
Total alternative tax	\$ 15,548.08

Total tax liability (lesser amount)	\$ 15,548.08
<hr/>	
Tax liability limited to amount determined in statutory notice	\$ 15,533.84
Tax assessed, account No. 852592	6,327.02
<hr/>	
Deficiency	\$ 9,206.82
<hr/>	

Schedule 14
Long-term Capital Gain

	Individual	Trust-5/7	Total
Reported in return	\$29,694.55	\$3,969.91	\$33,664.48
Increase, statutory notice	5,907.89	767.80	6,675.69
Decrease, schedule 11(a) and (b)	(8.67)	(1.05)	(9.72)
<hr/>		<hr/>	
Total	\$35,593.77	\$4,736.66	\$40,330.43
<hr/>		<hr/>	

[243]

EXHIBIT A

Marathon Paper Mills Company Bond and Stock
Received October 31, 1927 in Exchange for
3,357 Shares of Menasha Carton Company
Stock

Value of 3,357 shares at \$50.00 a share (Court's opinion)	\$167,850.00
<hr/>	
6,795 shares common stock for 48.033% of \$167,850.00	\$ 77,266.39
Basis per share of stock	\$11.37106
10/31/27 (767) shares sold at	\$11.37106 (8,721.60)
<hr/>	
6028 shares at	\$11.37106 \$ 68,544.79
12/ 2/29 18084 shares for 4 for 1 split-up	0
<hr/>	
24112 shares at	\$ 2,84276 \$ 68,544.79

2/9/32 (5000) shares gift to Gertrude		
	H. Gaylord at	\$ 2.84276 (14,213.80)
<hr/>		
	19,112 shares at	\$ 2.84276 \$ 54,330.99
11/35	(700) shares sold at	\$ 2.84276 (1,989.93)
<hr/>		
	18,412 shares at	\$ 2.84276 \$ 52,341.06
11/7/35 (5,000) shares to Gaylord		
	Trust at	\$ 2.84276 (14,213.80)
<hr/>		
	13,412 shares remaining at	\$ 2.84276 \$ 38,127.26
<hr/>		
	Basis per one share of stock	\$ 2.84276
	Basis per share, statutory notice	2.83542
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	Increase in basis per share	\$ 0.00734
<hr/>		

[Endorsed]: T.C.U.S. Filed July 13, 1944. [244]

The Tax Court of the United States
Washington

Docket No. 109273

GERTRUDE H. GAYLORD,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

Pursuant to the Court's Findings of Fact and Opinion, promulgated February 18, 1944, the respondent herein having filed a recomputation of tax on May 17, 1944, and the petitioner having

filed an acquiescence in said recomputation on June 19, 1944, it is

Ordered and Decided: That there are deficiencies in income tax, as follows:

Year	Deficiency
1936	\$1,087.10
1937	4,922.60
1938	None
1939	1,998.19

Entered July 14, 1944.

(Seal) (Sgd.) BOLON B. TURNER
Judge.

Copies served on both parties. [245]

The Tax Court of the United States
Washington

Docket No. 109138

GEORGE S. GAYLORD,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DECISION

Pursuant to the Court's Opinion, promulgated February 18, 1944, the respondent having filed a revised recomputation of tax on July 13, 1944, and the petitioner having filed an acquiescence in said recomputation on August 2, 1944, it is

Ordered and Decided: That there are deficiencies in income tax, as follows:

Year	Deficiencies
1936	\$17,826.37
1937	12,029.07
1938	8,211.85
1939	9,206.82

Enter:

Entered Aug. 4, 1944.

(Seal) (Sgd.) BOLON B. TURNER
Judge. [246]

In the United States Circuit Court of Appeals
for the Ninth Circuit

The Tax Court of the United States

Docket No. 109138

GEORGE S. GAYLORD,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION FOR REVIEW OF DECISION OF
THE TAX COURT OF THE UNITED
STATES

To the Honorable United States Circuit Court of
Appeals for the Ninth Circuit and the Judges
Thereof:

Comes now your petitioner George S. Gaylord

(hereinafter called petitioner or Mr. Gaylord), by Thomas A. J. Dockweiler and James W. Bontems C.P.A., his attorneys, and files with the clerk of The Tax Court of the United States his petition for review of the decision of The Tax Court of the United States and the Honorable Bolon B. Turner, a judge of said court, entered August 4, 1944, hereinafter referred to, and respectfully shows:

I.

COURT IN WHICH REVIEW IS SOUGHT
AND JURISDICTION

This is a proceeding for review by the United States Circuit Court of Appeals for the Ninth Circuit of a decision [247] of The Tax Court of the United States entered August 4, 1944, determining against petitioner a deficiency in his income taxes of \$17,826.37 for the taxable year 1936, of \$12,029.07 for the taxable year 1937, of \$8,211.85 for the taxable year 1938 and of \$9,206.82 for the taxable year 1939. However, this proceeding for such review concerns as to such deficiency for the taxable year 1937 only \$11,965.36 of said sum of \$12,029.07, as to such deficiency for the taxable year 1938 only \$8,074.13 of said sum of \$8,211.85 and as to such deficiency for the taxable year 1939 only \$7,925.35 of said sum of \$9,206.82, petitioner having since said decision of said Tax Court was so entered and prior to the filing of this petition paid to the Collector of Internal Revenue at Los Angeles, California, \$63.71 on said sum of \$12,029.07.

\$137.72 on said sum of \$8,211.85 and \$1,281.47 on said sum of \$9,206.82, together with interest as provided by law on all of such sums so paid to the date of such payment thereof. Petitioner is an individual and is now and at all times since prior to the year 1936 has been a resident of the City of Pasadena, in the County of Los Angeles, in the State of California. The respondent herein (hereinafter called Commissioner) is the duly appointed, qualified and acting Commissioner of Internal Revenue appointed and holding his office by virtue of the laws of the United States of America. Petitioner filed with the Collector of Internal Revenue for the Sixth District of California, at Los Angeles, California, his (petitioner's) individual returns of the income taxes in respect of which the aforementioned [248] deficiency was so determined by The Tax Court of the United States. Said district and the office of said Collector of Internal Revenue are located within the jurisdiction of the United States Circuit Court of Appeals for the Ninth Circuit. Jurisdiction of said United States Circuit Court of Appeals for the Ninth Circuit to review the above referred to decision of The Tax Court of the United States is provided for in Sections 1100, 1141 and 1142 of the United States Internal Revenue Code.

II.

PRIOR PROCEEDINGS

On September 17, 1941, Commissioner mailed to petitioner a notice of deficiency in which Commis-

sioner advised petitioner that the determination of his income liability for the taxable years 1936 to 1939, inclusive, disclosed a deficiency of \$49,518.76, or \$17,835.82 for 1936, \$12,033.50 for 1937, \$10,442.62 for 1938 and \$9,206.82 for 1939. On November 10, 1941, petitioner filed with the United States Board of Tax Appeals (now The Tax Court of the United States) his verified petition for a redetermination of such deficiency. Commissioner filed with said Board his answer to said petition on December 9, 1941. On September 17, 1941, Commissioner also mailed to Gertrude H. Gaylord, petitioner's wife (hereinafter referred to as Mrs. Gaylord) a notice of deficiency in which Commissioner advised her that the determination of her income tax liability for the taxable years 1936 to 1939, inclusive, disclosed a deficiency of \$8,043.63, or \$1,087.40 for 1936, \$4,925.01 for [249] 1937, \$32.51 for 1938 and \$1,998.71 for 1939. On November 26, 1941, she filed with said Board her verified petition for a redetermination of such deficiency; to which petition Commissioner filed his answer on January 2, 1942. As the issues of fact and law involved in the case made by Mrs. Gaylord's petition and Commissioner's answer thereto were the same as certain issues of fact and law (except for differences in total amounts of money or value concerned) as those arising from Mr. Gaylord's said petition and Commissioner's answer thereto, said Court consolidated the two cases for hearing and they were heard together by said Tax Court, the Honorable Bolon B. Turner, a judge thereof pre-

siding, on April 2 and 3, 1943, at Los Angeles, California. On February 18, 1944, that court, by said judge, promulgated its findings of fact and opinion deciding against Mr. and Mrs. Gaylord the issues of fact and law now brought up by Mr. Gaylord in this petition for review. Though they moved for reconsideration by said Tax Court of its determination, so announced, that (1) the income for the years 1936 through 1939 of the hereinafter referred to trust was taxable to Mr. and Mrs. Gaylord and (2) the basis for computing gain on certain stock sales by them and said trust during said years was less than the value claimed by the taxpayers, which motion was filed with said court March 17, 1944, it denied such motion March 18, 1944. The hereinbefore stated decision of which review is now sought followed on August 4, 1944. The controversy involved in this review concerns only a part of the issues which were before said Tax Court in those proceedings; [250] said decision of said Tax Court on the issues with which said controversy is concerned resulting in a deficiency, as so determined by it, of \$17,826.37 for the taxable year 1936, \$11,965.36 for the taxable year 1937, \$8,074.13 for the taxable year 1938 and \$7,925.35 for the taxable year 1939.

III.

NATURE OF THE CONTROVERSY

The nature of the controversy involved in this proceeding for review, stated as briefly as its factual background permits, is as follows:

There are two principal questions, which are the same as those presented in petitioner's above mentioned motion for reconsideration: (A) Was said trust at any time during the years 1936 through 1939 revocable by the trustors thereof, Mr. and Mrs. Gaylord, or other of them, and hence the trust income for those years taxable to them, and (B) what was the basis for computing gain on certain stock sales made by Mr. and Mrs. Gaylord and said trust during said years?

A. Question of Revocability of the Trust.

In the year 1935, prior to the execution and acknowledgment of the declaration of trust dated November 7, 1935, hereinafter referred to, it was agreed between Mr. and Mrs. Gaylord that if he would contribute to an irrevocable trust to be created for the uses and purposes and upon the terms and conditions set forth in such declaration 5000 shares of Marathon Paper Mills Company common stock owned by him as his separate property, such shares to be a part of the trust [251] estate to be provided for in such trust, she would contribute to such trust as a part of such trust estate in trust for the same uses and purposes and upon the same terms and conditions 2000 additional shares of such stock owned by her as her separate property, and, reciprocally, that if she would make such contribution he would make such contribution of 5000 shares. Accordingly they instructed their attorney to prepare a declaration of trust for such an irrevocable trust. He thereupon prepared a declara-

tion of trust dated November 7, 1935, which Mr. and Mrs. Gaylord signed about December 11, 1935. On that day they acknowledged before a notary public in Los Angeles County, California, its execution and left it in the attorney's custody, where it remained until the above mentioned hearing before said Tax Court. Pursuant to their precedent agreement Mr. Gaylord contributed his 5000 and Mrs. Gaylord her 2000 shares of Marathon Paper Mills common stock to such trust in the year 1935. Both of them in creating said trust (hereinafter referred to as the trust) proposed, intended and understood that they were creating an irrevocable trust of that stock and its proceeds for the uses and purposes and upon the terms and conditions set forth in said declaration and that neither they nor either of them had any power to revoke such trust or to make any change therein. In connection with their execution of said declaration their said attorney advised them that the trust was irrevocable. Upon acquisition for the trust by its trustees, with proceeds of sale of certain of the stock thus contributed, of real property in the jurisdictions hereinafter named, said declaration was [252] recorded in 1937 in the office of the County Recorder of Los Angeles County, California, and in 1938 in the respective offices of the clerks of the county courts of Cameron, Hidalgo, Potter and Jim Wells Counties, Texas. For such Texas recordings there was an additional acknowledgment of execution of said declaration by Mr. and Mrs. Gaylord and certification thereon of such

acknowledgment in Texas form on January 6, 1938, before the same notary.

In said declaration of trust Mr. and Mrs. Gaylord (who are therein called "trustee") declared that they hold and will hold said 7000 shares in trust for the uses and purposes and upon the terms and conditions set forth in said declaration, whose salient provisions may be summarized as follows: The trustee (this designation also including all successors in the trusteeship of the trust) shall, during the existence of the trust, take charge of and possess, manage and control all of said shares and all principal proceeds thereof and investments and reinvestments thereof and property substituted for any of said stock, proceeds, investments or reinvestments (all of which are referred to in said declaration as the "trust estate"), collect the income of the trust estate, and invest the trust estate in such manner as the trustee may deem advisable, and for or in connection with any of the aforesaid purposes or any purpose of the trust to sell or otherwise dispose of the trust estate upon such terms and for such consideration as the trustee may deem advisable. From the gross income of the trust estate or, if it be necessary, from the trust estate, the trustee shall [253] pay taxes on the trust estate and may also pay reasonable costs, expenses, charges and liabilities necessarily expended or incurred by the trustee in connection with the collection, care, administration, management or distribution of the trust estate or income

thereof and also, if the trustee is a corporation or person or persons other than Mr. or Mrs. Gaylord, reasonable fees or compensation for the services of the trustee in the administration of said trust. The entire net income received from the trust estate and available for distribution shall be distributed by the trustee, either monthly, quarterly or semi-annually as the circumstances and conditions of the trust estate will most conveniently permit, but in any event annually to Margaret Gaylord Ruppel (hereinafter referred to as Mrs. Ruppel) and Gertrude Gaylord (hereinafter referred to as Mrs. Bruce), who are the daughters of Mr. and Mrs. Gaylord, and the survivor of said daughters, share and share alike, while both are living. In the event of the death of either of them leaving lawful issue then such issue, so long as it shall continue to live during the existence of the trust, shall be entitled by right of representation to the share of such net income which the daughter so dying would have been entitled to if she had continued to live. The trust shall ipso facto terminate upon the attainment of the age of thirty years by Mrs. Bruce or her death prior thereto. Upon such termination all of the trust estate then in the possession or control of the trustee as the same then exists shall immediately vest in and be delivered by the trustee to said two daughters or the [254] survivor of them living at the time of such termination, share and share alike, if both of them shall then be living. However, in the event of the death of either of them prior to such termination leaving her surviving at the time of such termination lawful issue then the share of

the trust estate she would have taken if she had been living at such termination shall upon such termination immediately vest in and be delivered by the trustee to such lawful issue by right of representation. If upon the termination of the trust there shall then be living neither of said daughters nor any lawful issue of them, then upon such termination the trust estate shall vest in and be delivered to Mrs. Gaylord. Every beneficiary of the trust is restrained from in any manner anticipating, encumbering or alienating any right, interest or estate in principal or income of the trust. In distributing principal of the trust estate the trustee shall determine the method or procedure to be followed and shall execute all instruments necessary to confirm in the distributee title and possession to principal distributed. Invalidity of any provision of the trust, if ever decreed by a court of competent jurisdiction, shall not vitiate such as are valid. Mr. and Mrs. Gaylord, or either of them, can, with the trustee's written consent, add other property to the trust estate for the same uses and purposes and upon the same terms and conditions set forth in said declaration. Mr. and Mrs. Gaylord, or either of them, can resign at any time as trustee of the trust. Upon death or such resignation of either Mr. or Mrs. Gaylord the other of them shall act as the [255] trustee with all rights, powers, authorities, discretions and exemptions provided for the original trustees of the trust. Mr. Gaylord or in absence of any such appointment by him, Mrs. Gaylord, shall have the right to appoint

successor trustee or trustees of the trust in — neither Mr. or Mrs. Gaylord is acting as trustee. In the event neither of them is so acting and there is no such appointment The Northern Trust Company, of Chicago, Illinois, and any successor or assign of it shall ipso facto succeed as trustee of the trust. Finally, no security shall ever be required of the trustee for the performance of any duty or trust under said declaration. Though said declaration contained no statement that it was irrevocable, no right to change or revoke the trust was reserved.

In connection with the creation of the trust and as a part of the same transaction Mr. and Mrs. Gaylord each personally signed and under date of February 3, 1936, executed under oath a gift tax return for the calendar year 1935, which was filed in the office of the Collector of Internal Revenue at Los Angeles, California, March 10, 1936. Mr. Gaylord's said return included his contribution to the trust of his 5000 shares of Marathon Paper Mills common stock mentioned in said declaration of trust, and Mrs. Gaylord's said return covered her 2000 shares of such stock appearing in said declaration of trust. In each such return specific reference was made to the trust and it was expressly declared that the "gift" represented by the declarant's aforesaid contribution to the trust was made "By the creation of an irrevocable trust for the benefit of another." [256] The only trust to which reference was made in said gift tax returns was the trust provided for in said declaration of trust dated November 7, 1935. There was no other trust

then in existence. All entries in said returns are in Mr. Gaylord's own handwriting. Mr. Gaylord upon so filing his said return paid a gift tax shown thereon in the amount of \$2,531.27 and later under date of December 28, 1936, paid to said collector an additional tax of \$90.05 assessed on said return. No part of any gift tax so paid was ever refunded to Mr. Gaylord. Because of exemptions and exclusions no gift tax was payable by Mrs. Gaylord on her said return.

In the beginning of the year 1940, long before any question was raised as to the revocability or irrevocability of the trust, Mr. and Mrs. Gaylord, upon advice of counsel and out of an abundance of caution, signed and executed a certain Declaration Being a Part of a Certain Declaration of Trust Dated November 7, 1935, which was dated November 7, 1935, and acknowledged and sworn to by them under date of March 27, 1940, before a notary public in Los Angeles County, California, and recorded in the office of the county recorder of that county March 28, 1940. In this instrument, after referring to said declaration of trust dated November 7, 1935, hereinbefore summarized, Mr. and Mrs. Gaylord declare that the trust provided for in said declaration was always intended and is intended by them to be and is and shall always be absolutely irrevocable and that such further declaration is and is intended to be and shall always be a part of and taken with and construed as [257] a part of said declaration of trust the same as though it

had been physically incorporated in said declaration of trust.

Of the two first named beneficiaries of the trust, Mrs. Ruppel was born November 10, 1904, and Mrs. Bruce May 31, 1916. Both of them are living and each of them has lawful issue living. Mrs. Ruppel, by a first marriage, had two children, Barbara Brunker, born October 14, 1925, and Robert Henry Brunker, born June 3, 1928, both still living. Mrs. Bruce married May 29, 1937, and has as issue thereof a daughter Ann Bruce, born in April, 1938, and still living.

The above mentioned 7000 shares of Marathon Paper Mills common stock referred to in said declaration of trust dated November 7, 1935, were subsequently sold by Mr. and Mrs. Gaylord as trustees of the trust as follows: 4000 in the year 1936, 1600 in the year 1937, 1000 in the year 1938, and the remaining 400 in the year 1939. Such sales were shown in the fiduciary returns of the trust's income for those years by Mr. and Mrs. Gaylord as such trustees.

Until so sold the certificates for such shares were kept in a safe deposit box in the State of California under the name of the trustees of said trust. All of said 7000 shares were so sold and delivered upon sale either in Chicago, Illinois, or the City of New York, New York. It was only in Chicago or New York that sales of such shares were made by said trustees. All such sales were made for cash, all of which was deposited by said trustees in the Harris Trust & Savings Bank in Chicago, Illinois.

The funds of the trust in the years 1936, 1937 and 1938 were kept on deposit in the names of said trustees as such trustees with said Harris Trust & Savings Bank in Chicago, Illinois. In the years 1939, 1940 and 1941 all of the bank accounts of the trust were kept with that bank and with Bankers Trust Company in said City of New York.

During the year 1938 over \$94,000.00 of the proceeds of sales of Marathon Paper Mills stock belonging to the trust theretofore made was invested by Mr. and Mrs. Gaylord as trustees of the trust in, and by way of purchase for the trust of, certain improved income producing real properties in the State of Texas, such properties being located in the Cities of Amarillo, Alice, McAllen and Harlingen in that state. The title to such property so purchased was taken in the name of Mr. and Mrs. Gaylord as such trustees. Said real property ever since has been owned and held by the trustees of the trust for the benefit of the trust and its beneficiaries.

All of the rents belonging to the trust received by its trustees from the above mentioned real property in the State of Texas in the years 1938 and 1939 were included in the fiduciary returns by said trustees of the income of the trust for said years. The net rents from said real property so included amounted to \$3,859.95 for the year 1938 and \$6,370.67 for the year 1939.

Each of the two beneficiaries of the trust, Mrs. Ruppel and Mrs. Bruce, who were then en-

titled to all of the net income thereof in equal shares between them, included in her individual income tax return for each of the years 1936, 1937, 1938 and [259] 1939 her one-half share of the net income of the trust for that year as shown by the fiduciary return of the trustees of the trust for that year, including her share of the net income of the trust from the rents from said Texas real property, and paid to the Collector of Internal Revenue at Los Angeles, California, with whom all of said individual and fiduciary returns were filed, income tax on her one-half of the net income of the trust. Such income included her share of the taxable capital gain, as shown on said fiduciary returns, on the above mentioned sales in the years 1936 to 1939, inclusive, of the 7000 shares of Marathon Paper Mills Company common stock belonging to the trust.

On the foregoing facts respondent Commissioner determined and contended before The Tax Court of the United States that the trust was revocable by Mr. and Mrs. Gaylord, or either of them, at all times during the years 1936 through 1939 and, consequently, under the provisions of Section 22(a) and/or Section 166 of the Revenue Acts of 1936 and 1938 and/or the same sections of the Internal Revenue Code, all of the net income of the trust for those years, which in those years had been distributed by the trustees of the trust to the beneficiaries thereof, Mrs. Ruppel and Mrs. Bruce, constituted income of Mr. and Mrs. Gaylord in the

relative proportions of their respective contributions to the trust, that is, two-sevenths to Mrs. Gaylord, because she had contributed 2000 of the 7000 shares of Marathon Paper Mills Company stock to the trust, and five-sevenths to Mr. Gaylord, because he had contributed the other [260] 5000 shares of such 7000 shares forming the original corpus of the trust, and that, accordingly, petitioner Mr. Gaylord was chargeable for the year 1936 with \$31,284.44 of the trust's net income, for the year 1937 with \$23,620.76 of the trust's net income, for the year 1938 with \$14,446.25 of the trust's net income and for the year 1939 with \$18,001.89 of the trust's net income. On the contrary, petitioner contended to the Commissioner, and before said court, and now maintains that the trust has always been and is irrevocable and that none of the income thereof was ever taxable to him.

B. Question as to Basis for Computing Gain on Stock Sales.

In addition to the sales made by the trustees of the trust in the years 1936 through 1939 of Marathon Paper Mills Company stock belonging to it, petitioner sold in 1936 4950 shares of such stock then owned by him as his separate property, in 1937 2800 shares of such stock similarly owned by him, in 1938 3300 shares of such stock similarly owned and in 1939 2362 shares of such stock similarly owned. The 2000 shares of said stock contributed by Mrs. Gaylord to the trust in 1935 had been received by her as a gift from Mr. Gaylord in 1930. It is conceded that all of the 7000 shares

belonging to the trust and constituting the original corpus thereof have the same basis for computing gain on such sales which they had when they belonged to Mr. Gaylord before he gave them to Mrs. Gaylord. All of the aforementioned shares have the following history:

On July 1, 1917, Mr. Gaylord was the owner of 337 shares (which purchased at various times in the period from previous to [261] March 1, 1913, to July 1, 1917, had cost him \$34,436.50) and his partner, H. S. Clinedinst (hereinafter referred to as Clinedinst) was the owner of 337 shares of the 726 shares of common stock of Menasha Carton Company, the remaining 52 shares being owned by other individuals. Clinedinst also owned all of the stock of Menasha Printing Company. The respective places of business of these two companies, Menasha Carton Company and Menasha Printing Company, were across the street from each other in Menasha, Wisconsin. Clinedinst desired to consolidate or merge the assets and businesses conducted by these two corporations into a new corporation with Mr. Gaylord as its manager. For that purpose an agreement was entered into between Clinedinst and Mr. Gaylord for such consolidation or merger (hereinafter referred to as "consolidation") of said two companies, which resulted in the creation of the Menasha Printing and Carton Company. The agreement provided, among other things, that Mr. Gaylord should acquire sufficient of the stock of the new corporation

to bring his holdings therein up to 40% of its outstanding stock.

By way of convenience for determining between the stockholders of the Menasha Carton Company and of the Menasha Printing Company the respective proportions of interest of each of such stockholders in the new Menasha Printing and Carton Company (but not the real values involved) going into and resulting from such consolidation, an appraisal was made at the time, by a competent appraisal company, of the tangible assets of the Menasha Carton Company and the Menasha Printing Company and the values shown [262] by such appraisal plus the "quick assets" of the two companies involved was the gauge used for determining as between each of the stockholders of these two companies his proportion of interest in the new company.

The consolidation was effected in August, 1917, as of July 1, 1917. In such consolidation Mr. Gaylord received for his above mentioned 337 shares of Menasha Carton Company stock and his promissory note for \$152,161.11 dated August, 30, 1917, payable to the order of Clinedinst three years after date with interest at six per cent per annum (which note was paid in full in 1921), 1975 shares of the common and 410 shares of the preferred stock of the new company, Menasha Printing and Carton Company. The par or stated value of said 1975 shares of common and 410 shares of preferred stock was equal (approximately) in amount to said prin-

incipal sum of said promissory note plus the value of the proportionate part of the tangible assets of the two combined companies as so appraised and their "quick assets", to which Mr. Gaylord's interest in the Menasha Carton Company entitled him. His said 337 shares of that company then had a real and actual value far in excess of that determined by such appraisal of tangible assets plus such "quick assets", which determination was resorted to only for the purpose of fixing the proportion and not the real or actual value of the participation in the new Menasha Printing and Carton Company of the several owners of the two companies which were being consolidated into it. For such purpose no account was taken of the goodwill, earning capacity or value as a profitable going con- [263] cern of either of the two companies which entered into the consolidation. The profits of the Menasha Carton Company for the first seven months of 1917 were \$56,000, and of the Menasha Printing Company for the first six months of 1917, \$187,000, in round figures. The combined profits at the end of 1917 for these two concerns operated separately for the first six months of that year and of the new company for the last six months of that year was \$315,000.00 in round figures. Determination of the value of the stock of the Menasha Carton Company and Menasha Printing Company through capitalization of such current earnings at ten times the amount thereof, a conservative rate, and taking into consideration such goodwill, earning capacity and value of their businesses as profit-

able going concerns results in a substantially higher value for such stock than that indicated by value of tangible assets and "quick assets" only. Such determination, taking into consideration all of the pertinent factors or elements, including not only value of tangible assets and "quick assets", but as well goodwill, earning capacity and worth as profitable going concern and business, demonstrates a value of at least \$350,000.00 for Mr. Gaylord's said 337 shares of Menasha Carton Company at the time of such consolidation.

In making the consolidation, the appraised value of the physical assets plus book value of the "quick assets" of the Menasha Carton Company was determined to be \$186,000.00, while the appraised value of the physical assets plus book value of the "quick assets" of the Menasha Printing Company was determined to be \$774,000.00, a total of \$960,000.00. For all of [264] the assets of these two corporations, including goodwill, earning capacity and value as going concerns, the new corporation, Menasha Printing and Carton Company, issued 5000 shares of common and 4600 shares of preferred stock all of the par value of \$100 per share. Of the \$186,000.00, value of tangible and "quick assets" of the Menasha Printing Company, \$86,338.84+ was allocated to Mr. Gaylord's 337 shares of stock of that company. Based on the proportion of \$86,338.84+ to \$774,000.00, Mr. Gaylord was entitled to receive for his 337 shares of Menasha Carton Company stock 449.6815 shares of common and 413.7074 shares of preferred stock of the new corporation. However,

for said 337 shares he received 410 shares of the preferred and 453.3889 shares of the common stock of that company. Gaylord purchased in this transaction sufficient additional shares of such common stock to increase his common stock holdings in the new corporation to 1975 shares.

Though the exchange of his 337 shares of Menasha Carton Company stock for stock in the new corporation resulted in taxable gain to him, Mr. Gaylord, through inadvertence and mistake, did not report in his income tax return for 1917 any income on such exchange. In 1922 or 1923 Mr. Gaylord purchased the remaining interest of Clinedinst in the Menasha Printing and Carton Company. In the meantime all preferred stock issued in the above referred to 1917 consolidation had been retired. During the interval between such consolidation and October 31, 1927, Mr. Gaylord sold to employees some small lots of his common stock of Menasha Printing and Carton Company. In 1925 he received a [265] 100% stock dividend on the stock of that company he then held. As of date October 31, 1927, he owned and held 3357 shares of such stock.

Of the stock so held, 350 shares had been transferred by Mr. Gaylord in 1925 to his brother C. W. Gaylord for 432 shares of Robert Gaylord, Inc. stock. Thereafter C. W. Gaylord wanting to reacquire said 432 shares of Robert Gaylord, Inc. for use in connection with reorganization of the latter corporation, Mr. Gaylord proposed to sell

such shares to C. W. Gaylord for \$300,000.00 but the offer was not accepted and thereafter C. W. Gaylord proposed that the previous exchange of 350 shares of Menasha Printing and Carton Company for the 432 shares of Robert Gaylord, Inc. stock be cancelled and the parties restored to the position they would have been in if the exchange had not been made. This was done and Mr. Gaylord returned to C. W. Gaylord the 432 shares of Robert Gaylord, Inc. stock and received back 352 shares of Menasha Printing and Carton Company stock, each of the parties paying over to the other all dividends received by him on the stock involved in the exchange standing in his name during the interval. These exchanges between Mr. Gaylord and C. W. Gaylord were taxable although, through inadvertence and mistake, not considered so by Mr. Gaylord at the time.

On October 31, 1927, Menasha Products Company (such then being the name of Menasha Printing and Carton Company) was merged with Marathon Paper Mills Company. In this tax-free reorganization Mr. Gaylord received 6728 shares of the Marathon Paper [266] Mills Company stock and \$1,038,000.00 in face value of Marathon Paper Mills Company 5% bonds in exchange for his 3357 shares of common stock of Menasha Products Company. In December, 1929, the last mentioned shares were split four shares for one.

As a result of the foregoing history of the Marathon Paper Mills Company stock sold by the trust and Mr. Gaylord in 1936, 1937, 1938 and 1939, gain

thereon was computed on a basis of \$8.21 per share and income taxes paid accordingly by Mr. Gaylord and the beneficiary daughters of said trust.

On the foregoing facts respondent Commissioner determined and contended before The Tax Court of the United States that for the purpose of computing capital gains realized in the years 1936, 1937, 1938 and 1939 by Mr. Gaylord and the trust from the sales of his and its shares of Marathon Paper Mills Company common stock the statutory basis for computing gain on each such sale was \$2.83542 per share and, consequently, as to such sales there was the following additional gains realized:

On sale in 1936 by the trust of 4000 shares, \$21.-498.32, of which 30%, or \$6,449.50, is to be taken into account under section 117(a) of the Revenue Act of 1936;

On sale in 1936 by Mr. Gaylord of 4950 shares, \$26,604.17, of which 30%, or \$7,981.25, is so to be taken into account;

On sale in 1937 by the trust of 1600 shares, \$8,599.33, of which 30%, or \$2,579.80, is so to be taken into account; [267]

On sale in 1937 by Mr. Gaylord of 2800 shares, \$15,048.82, of which 30%, or \$4,514.65, is so to be taken into account;

On sale in 1938 by the trust of 1000 shares, \$5,374.58, of which 50%, or \$2,687.29, is to be taken into account under section 117(b) of the Revenue Act of 1938;

On sale in 1938 by Mr. Gaylord of 3300 shares, \$17,736.11, of which 50%, or \$8,868.06, is so to be taken into account;

On sale in 1939 by the trust of 400 shares, \$2,149.83, of which 50%, or \$1,074.92, is to be taken into account under section 117(b) of the Internal Revenue Code; and

On sale in 1939 by Mr. Gaylord of 2362 shares, \$12,694.77, of which 50%, or \$6,347.38, is so to be taken into account.

To the contrary, petitioner contended to the Commissioner, and before said court, and now maintains that the statutory basis for computing gain on each such sale was \$8.21 per share as claimed in his income tax returns and the fiduciary returns of the trust filed for those years.

On his petition for redetermination of said deficiencies said Tax Court held with respect to the subjects and issues involved in this present proceeding for review by the Circuit Court of Appeals of the United States for the Ninth Circuit [268]

(1) that the trust was revocable during the taxable years 1936 through 1939 and that 5/7ths of the trust income for those years was taxable to the petitioner, and

(2) that the basis for computing gain on the sales by the petitioner individually and by the trustees of the trust of Marathon Paper Mills Company common stock was \$2.84276 per share instead of \$8.21 per share as claimed by petitioner. Accordingly, said Tax Court determined the defi-

iciencies set forth in Subdivision I of this petition, all of which deficiencies result from said two holdings.

IV.

ASSIGNMENTS OF ERROR

In making its decision as aforesaid The Tax Court of the United States committed errors, upon which petitioner relies as the basis of his proceeding herein, as follows, to-wit:

1. Said court erred in deciding that there is a deficiency of \$17,826.37 or any deficiency in income tax of petitioner for the year 1936;

2. In deciding that there is a deficiency of \$12,029.07 or any deficiency in income tax of petitioner for the year 1937;

3. In deciding that there is a deficiency of \$8,211.85 or any deficiency in income tax of petitioner for the year 1938;

4. In deciding that there is a deficiency of \$8,211.85 or any deficiency in income tax of petitioner for the year 1939; [269]

5. In determining that the trust was revocable during the years 1936 through 1939 or at any time in any of said years;

6. In failing to find and decide as a matter of fact and of law that the trust was at all times from its inception in 1935 an irrevocable trust and that all of the income of the trust which was distributed by the trustees to and received by the beneficiaries of the trust in the years 1936, 1937, 1938 and 1939 was income of such beneficiaries and not income of Mr. and Mrs. Gaylord, or either of them;

7. In disregarding the legal effect of the undisputed mutual agreement of Mr. and Mrs. Gaylord for the creation by them of the trust as an irrevocable trust;

8. In failing to distinguish between the effect as to Mr. and Mrs. Gaylord themselves of their contract to create the trust and the result thereof as concerns their daughters and their issue, who are the beneficiaries of the trust;

9. In concluding as a matter of law and deciding that the trust was a "voluntary trust" as that phrase is used in Section 2280 of the Civil Code of California, as amended in 1931;

10. In concluding and deciding, contrary to law, that Section 3399 of the California Civil Code has no application to the trust;

11. In disregarding the fact that it was none of the beneficiaries of the trust who were before said court insisting upon application of said Section 3399 but the two contracting parties, the creators of the trust, Mr. and Mrs. Gaylord, both of whom invoked the protection of that section;

12. In failing to apply to the trust Section 1640 of the California Civil Code and Section 3401 of the same code which, with Section 3399 of the California Civil Code, fully covers the situation of any omission of any express declaration of irrevocability in said declaration of trust dated November 7, 1935;

13. In failing to give effect to the gift tax returns of Mr. and Mrs. Gaylord wherein they re-

ferred to and identified the trust as an irrevocable trust;

14. In concluding that estoppel is not an issue in this case and in failing to decide that respondent Commissioner is estopped to claim that the trust was revocable;

15. In disregarding and failing to give effect to undisputed evidence before said court in said declaration of trust and of acts and conduct of the trustees that the trust was intended to be operative under laws of jurisdictions other than California in which other jurisdictions the trust as set forth in said declaration has always been irrevocable;

16. In deciding, contrary to law and to fact, that the \$3,859.95 rent for the year 1938 and the \$6,370.67 rent for the year 1939 of real property in the State of Texas belonging to said trust was income of a revocable trust;

17. In deciding that 5/7ths or any part of the income of the trust for the years 1936, 1937, 1938 and 1939, or any of those years, was taxable to petitioner; [271]

18. In deciding that the basis for computing gain on the above referred to sales of Marathon Paper Mills Company common stock was \$2.84276 per share instead of \$8.21 per share claimed by petitioner, there being no evidence in the record to support any such finding and such finding ignoring the undisputed evidence of real and actual value of the stock of Menasha Carton Company and Menasha Printing Company involved in the exchange resulting in the consolidation of said two

corporations in the Menasha Printing and Carton Company;

19. In failing to find and decide that under Section 202(a) of the 1926 Revenue Act the cost to Mr. Gaylord of the 350 shares of Menasha Printing and Carton Company stock which he received from his brother C. W. Gaylord in 1927 in exchange for 432 shares of Robert Gaylord, Inc. was the market or true values of such shares of Menasha Printing and Carton Company in August, 1927;

20. In holding and deciding that the \$152,161.11 paid by Mr. Gaylord to Clinedinst was the cost of 1525 shares of common stock of Menasha Printing and Carton Company received by Mr. Gaylord in the consolidation of Menasha Printing Company and Menasha Carton Company;

21. The decision of said court for which review is here prayed is not supported by the evidence;

22. Said decision is contrary to the evidence; and

23. Said decision is contrary to the law. [272]

Wherefore, your petitioner George S. Gaylord prays that the United States Circuit Court of Appeals for the Ninth Circuit review the findings of fact and opinion and the decision of The Tax Court of the United States entered August 4, 1944, determining a deficiency in the income taxes of petitioner for the calendar years 1936, 1937, 1938 and 1939, hereinbefore referred to, and reverse and set aside said decision and direct the entry of a decision by The Tax Court of the United States in favor of petitioner determining that there is no

deficiency in his income taxes for the said years 1936, 1937, 1938 and 1939; that a transcript of the record be prepared in accordance with the law and applicable rules and be transmitted to the Clerk of said Circuit Court of Appeals for filing; and for such other and further relief as to said Court may appear proper in the premises.

THOMAS A. J. DOCKWEILER

JAMES W. BONTEMS, C.P.A.

Attorneys for said Petitioner.

State of California.

County of Los Angeles—ss.

Thomas A. J. Dockweiler, being first duly sworn, says: That he is one of the attorneys of record for said petitioner George S. Gaylord in this proceeding and prepared the foregoing [273] petition and is familiar with the contents thereof; that the statements made therein are true to the best of his knowledge, information and belief; that said petition is not filed for the purpose of delay and that said affiant believes said petitioner is justly entitled to the relief sought.

THOMAS A. J. DOCKWEILER

Subscribed and sworn to before me this 3rd day of October, 1944.

(Notarial Seal) J. F. KINMAN

Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires August 14, 1946.

[Endorsed]: T.C.U.S. Filed Oct. 11, 1944. [274]

No. 10936

United States
Circuit Court of Appeals
For the Ninth Circuit.

GEORGE S. GAYLORD,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

GERTRUDE H. GAYLORD,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Transcript of the Record
In Two Volumes
VOLUME II
Pages 305 to 579

Upon Petitions to Review Decisions of the Tax Court
of the United States

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Upon Petitions to Review Decisions of the Tax Court
of the United States

[Title of Circuit Court of Appeals and Cause.]

NOTICE OF FILING OF PETITION FOR RE-
VIEW OF DECISION OF THE TAX
COURT OF THE UNITED STATES

To: Commissioner of Internal Revenue,
Internal Revenue Building,
Washington D. C.

And To:

J. P. Wenchel, Chief Counsel,
Bureau of Internal Revenue,
Internal Revenue Building,
Washington, D. C.;

B. H. Neblett, Division Counsel,
Bureau of Internal Revenue;

Earl C. Crouter and

B. M. Coon,

Special Attorneys,

Bureau of Internal Revenue;

Attorneys for said Commissioner.

You, And Each Of You, Are Hereby Notified that George S. Gaylord, the above named petitioner, did on the day of October, 1944, file with the Clerk of The Tax Court of the United States, at Washington, D. C., a petition for review by [275] the United States Circuit Court of Appeals for the Ninth Circuit of the decision of said tax court heretofore rendered in the above entitled cause. A copy of said petition as filed is hereto attached and served upon you.

Dated: This day of October, 1944.

THOMAS A. J. DOCKWEILER

whose post office address is 1035 I. N. Van Nuys
Building, 210 West Seventh Street, Los An-
geles 14, California.

JAMES W. BONTEMS C.P.A.

whose post office address is 215 West Sixth Street,
Los Angeles 14, California.

Attorneys for said petitioner
George S. Gaylord

Personal service of the foregoing notice of filing
and of a copy of the petition for review therein re-
ferred to is hereby acknowledged this 11th day of
October, 1944.

J. P. WENCHEL.

Chief Counsel, Bureau of In-
ternal Revenue;

B. H. NEBLETT,

Division Counsel, Bureau of
Internal Revenue.

EARL C. CROUTER and

B. M. COON,

Special Attorneys, Bureau of
Internal Revenue.

[Signed]

J. P. WENCHEL. CAR.

Attorneys for said Commis-
sioner

[Endorsed]: T.C.U.S. Filed Oct. 11, 1944. [276]

[Title of Circuit Court of Appeals and Cause.]

PETITION FOR REVIEW OF DECISION OF
THE TAX COURT OF THE UNITED STATES

To The Honorable United States Circuit Court of
Appeals for the Ninth Circuit and the Judges
thereof:

Comes now your petitioner Gertrude H. Gaylord (hereinafter called petitioner or Mrs. Gaylord), by Thomas A. J. Dockweiler and James W. Bontems, her attorneys, and files with the clerk of the Tax Court of the United States her petition for review of the decision of The Tax Court of the United States and the Honorable Bolon B. Turner, a judge of said court, entered July 14, 1944, hereinafter referred to, and respectfully shows:

I.

COURT IN WHICH REVIEW IS SOUGHT
AND JURISDICTION

This is a proceeding for review by the United States Circuit Court of Appeals for the Ninth Circuit of a decision [277] of The Tax Court of the United States entered July 14, 1944, determining against petitioner a deficiency in her income taxes of \$1,087.10 for the taxable year 1936, of \$4,922.60 for the taxable year 1937 and of \$1,998.19 for the taxable year 1939. Petitioner is an individual and is now and at all times since prior to the year 1936 has been a resident of the City of Pasadena, in the County of Los Angeles, in the State of California.

The respondent herein (hereinafter called Commissioner) is the duly appointed, qualified and acting Commissioner of Internal Revenue appointed and holding his office by virtue of the laws of the United States of America. Petitioner filed with the Collector of Internal Revenue for the Sixth District of California, at Los Angeles, California, her individual returns of the income taxes in respect of which the aforementioned deficiency was so determined by The Tax Court of the United States. Said district and the office of said Collector of Internal Revenue are located within the jurisdiction of the United States Circuit Court of Appeals for the Ninth Circuit. Jurisdiction of said United States Circuit Court of Appeals for the Ninth Circuit to review the above referred to decision of The Tax Court of the United States is provided for in Sections 1100, 1141 and 1142 of the United States Internal Revenue Code.

II.

PRIOR PROCEEDINGS

On September 17, 1941, Commissioner mailed to petitioner [278] a notice of deficiency in which Commissioner advised petitioner that the determination of her income liability for the taxable years 1936 to 1939, inclusive, disclosed a deficiency of \$8,043.63, or \$1,087.40 for 1936, \$4,925.01 for 1937, \$32.51 for 1938 and \$1998.71 for 1939. On November 26, 1941, petitioner filed with the United States Board of Tax Appeals (now The Tax Court of the United States) her verified petition for a redetermination of such deficiency. Commissioner

filed with said Board his answer to said petition on January 2, 1942. On September 17, 1941, Commissioner also mailed to George S. Gaylord, petitioner's husband (hereinafter referred to as Mr. Gaylord) a notice of deficiency in which Commissioner advised him that the determination of his income tax liability for the taxable years 1936 to 1939, inclusive, disclosed a deficiency of \$32,380.50, or \$9,650.54 for 1936, \$9656.84 for 1937, \$6746.10 for 1938 and \$6327.02 for 1939. On November 10, 1941, he filed with said Board his verified petition for a redetermination of such deficiency; to which petition Commissioner filed his answer on December 9, 1941. As the issues of fact and law involved in the case made by Mr. Gaylord's petition and Commissioner's answer thereto included, inter alia, the same issues of fact and law (except for differences in total amounts of money or value concerned) as those arising from Mrs. Gaylord's said petition and Commissioner's answers thereto, said Court consolidated the two cases for hearing and they were heard together by said Tax Court, the Honorable Bolton B. Turner, a judge thereof presiding, on April 2 and 3, 1943, at Los Angeles, California. On [279] February 18, 1944, that court, by said judge, promulgated its findings of fact and opinion deciding against Mr. and Mrs. Gaylord the issues of fact and law now brought up by Mrs. Gaylord in this petition for review. Though they moved for reconsideration by said Tax Court of its determination, so announced, that (1) the income for

the years 1936 through 1939 of the hereinafter referred to trust was taxable to Mr. and Mrs. Gaylord and (2) the basis for computing gain on certain stock sales by them and said trust during said years was less than the value claimed by the taxpayers, which motion was filed with said court March 17, 1944, it denied such motion March 18, 1944. The hereinbefore stated decision of which review is now sought followed on July 14, 1944. The controversy involved in this review concerns only a part of the issues which were before said Tax Court in those proceedings.

III.

NATURE OF THE CONTROVERSY

The nature of the controversy involved in this proceeding for review, stated as briefly as its factual background permits, is as follows:

There are two principal questions, which are the same as those presented in petitioner's above mentioned motion for reconsideration: (A) Was said trust at any time during the years 1936 through 1939 revocable by the trustors thereof, Mr. and Mrs. Gaylord, or either of them, and hence the trust income for those years taxable to them, and (B) what was the basis for computing gain on certain stock sales made by Mr. and Mrs. Gaylord and said trust during said years? [280]

A. Question of Revocability of the Trust.

In the year 1935, prior to the execution and acknowledgment of the declaration of trust dated November 7, 1935, hereinafter referred to, it was

agreed between Mr. and Mrs. Gaylord that if he would contribute to an irrevocable trust to be created for the uses and purposes and upon the terms and conditions set forth in such declaration 5000 shares of Marathon Paper Mills Company common stock owned by him as his separate property, such shares to be a part of the trust estate to be provided for in such trust, she would contribute to such trust as a part of such trust estate in trust for the same uses and purposes and upon the same terms and conditions 2000 additional shares of such stock owned by her as her separate property, and, reciprocally, that if she would make such contribution he would make such contribution of 5000 shares. Accordingly they instructed their attorney to prepare a declaration of trust for such an irrevocable trust. He thereupon prepared a declaration of trust dated November 7, 1935, which Mr. and Mrs. Gaylord signed about December 11, 1935. On that day they acknowledged before a notary public in Los Angeles County, California, its execution and left it in the attorney's custody, where it remained until the above mentioned hearing before said Tax Court. Pursuant to their precedent agreement Mr. Gaylord contributed his 5000 and Mrs. Gaylord her 2000 shares of Marathon Paper Mills common stock to such trust in the year 1935. Both of them in creating said trust (hereinafter referred to as the trust) proposed, intended and understood that they were creating an irrevocable trust of that stock and its proceeds [281] for

the uses and purposes and upon the terms and conditions set forth in said declaration and that neither they nor either of them had any power to revoke such trust or to make any change therein. In connection with their execution of said declaration their said attorney advised them that the trust was irrevocable. Upon acquisition for the trust by its trustees, with proceeds of sale of certain of the stock thus contributed, of real property in the jurisdictions hereinafter named, said declaration was recorded in 1937 in the office of the County Recorder of Los Angeles County, California, and in 1938 in the respective offices of the clerks of the county courts of Cameron, Hidalgo, Potter and Jim Wells Counties, Texas. For such Texas recordings there was an additional acknowledgment of execution of said declaration by Mr. and Mrs. Gaylord and certification thereon of such acknowledgement in Texas form on January 6, 1938, before the same notary.

In said declaration of trust Mr. and Mrs. Gaylord (who are therein called "trustee") declared that they hold and will hold said 7000 shares in trust for the uses and purposes and upon the terms and conditions set forth in said declaration, whose salient provisions may be summarized as follows: The trustee (this designation also including all successors in the trusteeship of the trust) shall, during the existence of the trust, take charge of and possess, manage and control all of said shares and all principal proceeds thereof and investments and reinvestments thereof and property substituted for

any of said stock, proceeds, investments or reinvestments (all of which [282] are referred to in said declaration as the "trust estate"), collect the income of the trust estate, and invest the trust estate in such manner as the trustee may deem advisable, and for or in connection with any of the aforesaid purposes or any purpose of the trust to sell or otherwise dispose of the trust estate upon such terms and for such consideration as the trustee may deem advisable. From the gross income of the trust estate or, if it be necessary, from the trust estate, the trustee shall pay taxes on the trust estate and may also pay reasonable costs, expenses, charges and liabilities necessarily expended or incurred by the trustee in connection with the collection, care, administration, management or distribution of the trust estate or income thereof and also, if the trustee is a corporation or person or persons other than Mr. or Mrs. Gaylord, reasonable fees or compensation for the services of the trustee in the administration of said trust. The entire net income received from the trust estate and available for distribution shall be distributed by the trustee, either monthly, quarterly or semi-annually as the circumstances and conditions of the trust estate will most conveniently permit, but in any event annually, to Margaret Gaylord Ruppel (hereinafter referred to as Mrs. Ruppel) and Gertrude Gaylord (hereinafter referred to as Mrs. Bruce), who are the daughters of Mr. and Mrs. Gaylord, and the survivor of said daughters, share and share alike, while both pre

living. In the event of the death of either of them leaving lawful issue then such issue, so long as it shall continue to live during the existence of the trust, shall be [283] entitled by right of representation to the share of such net income which the daughter so dying would have been entitled to if she had continued to live. The trust shall ipso facto terminate upon the attainment of the age of thirty years by Mrs. Bruce or her death prior thereto. Upon such termination all of the trust estate then in the possession or control of the trustee as the same then exists shall immediately vest in and be delivered by the trustee to said two daughters or the survivor of them living at the time of such termination, share and share alike, if both of them shall then be living. However in the event of the death of either of them prior to such termination leaving her surviving at the time of such termination lawful issue then the share of the trust estate she would have taken if she had been living at such termination shall upon such termination immediately vest in and be delivered by the trustee to such lawful issue by right of representation. If upon the termination of the trust there shall then be living neither of said daughters nor any lawful issue of them, then upon such termination the trust estate shall vest in and be delivered to Mrs. Gaylord. Every beneficiary of the trust is restrained from in any manner anticipating, encumbering or alienating any right, interest or estate in principal or income of the trust. In distributing principal of the trust estate the trustee shall determine the method

or procedure to be followed and shall execute all instruments necessary to confirm in the distributee title and possession to principal distributed. Invalidity of any provision of the trust, if [284] ever decreed by a court of competent jurisdiction, shall not vitiate such as are valid. Mr. and Mrs. Gaylord, or either of them, can, with the trustee's written consent, add other property to the trust estate for the same uses and purposes and upon the same terms and conditions set forth in said declaration. Mr. and Mrs. Gaylord, or either of them, can resign at any time as trustee of the trust. Upon death or such resignation of either Mr. or Mrs. Gaylord the other of them shall act as the trustee with all rights, powers, authorities, discretions and exemptions provided for the original trustees of the trust. Mr. Gaylord or in absence of any such appointment by him, Mrs. Gaylord, shall have the right to appoint successor trustee or trustees of the trust in case neither Mr. or Mrs. Gaylord is acting as trustee. In the event neither of them is so acting and there is no such appointment The Northern Trust Company, of Chicago, Illinois, and any successor or assign of it shall ipso facto succeed as trustee of the trust. Finally, no security shall ever be required of the trustee for the performance of any duty or trust under said declaration. Though said declaration contained no statement that it was irrevocable, no right to change or revoke the trust was reserved.

In connection with the creation of the trust and

as a part of the same transaction Mr. and Mrs. Gaylord each personally signed and under date of February 3, 1936, executed under oath a gift tax return for the calendar year 1935, which was filed in the office of the Collector of Internal Revenue at Los Angeles, California, March 10, 1936. Mr. Gaylord's said [285] return included his contribution to the trust of his 5000 shares of Marathon Paper Mills common stock mentioned in said declaration of trust, and Mrs. Gaylord's said return covered her 2000 shares of such stock appearing in said declaration of trust. In each such return specific reference was made to the trust and it was expressly declared that the "gift" represented by the declarant's aforesaid contribution to the trust was made "By the creation of an irrevocable trust for the benefit of another." The only trust to which reference was made in said gift tax returns was the trust provided for in said declaration of trust dated November 7, 1935. There was no other trust then in existence. All entries in said returns are in Mr. Gaylord's own handwriting. Mr. Gaylord upon so filing his said return paid a gift tax shown thereon in the amount of \$2,531.27 and later under date of December 28, 1936, paid to said collector an additional tax of \$90.05 assessed on said return. No part of any gift tax so paid was ever refunded to Mr. Gaylord. Because of exemptions and exclusions no gift tax was payable by Mrs. Gaylord on her said return.

In the beginning of the year 1940, long before any question was raised as to the revocability or

irrevocability of the trust, Mr. and Mrs. Gaylord, upon advice of counsel and out of an abundance of caution, signed and executed a certain Declaration Being A Part Of A Certain Declaration Of Trust Dated November 7, 1935, which was dated November 7, 1935, and acknowledged and sworn to by them under date of March 27, 1940, before a notary public in Los Angeles County, California, and [286] recorded in the office of the county recorder of that county March 28, 1940. In this instrument, after referring to said declaration of trust dated November 7, 1935, hereinbefore summarized, Mr. and Mrs. Gaylord declare that the trust provided for in said declaration was always intended and is intended by them to be and is and shall always be absolutely irrevocable and that such further declaration is and is intended to be and shall always be a part of and taken with and construed as a part of said declaration of trust the same as though it had been physically incorporated in said declaration of trust.

Of the two first named beneficiaries of the trust, Mrs. Ruppel was born November 10, 1904, and Mrs. Bruce May 31, 1916. Both of them are living and each of them has lawful issue living. Mrs. Ruppel, by a first marriage, had two children, Barbara Brunker, born October 14, 1925, and Robert Henry Brunker, born June 3, 1928, both still living. Mrs. Bruce married May 29, 1937, and has as issue thereof a daughter Ann Bruce, born in April, 1938, and still living.

The above mentioned 7000 shares of Marathon Paper Mills common stock referred to in said declaration of trust dated November 7, 1935, were subsequently sold by Mr. and Mrs. Gaylord as trustees of the trust as follows: 4000 in the year 1936, 1600 in the year 1937, 1000 in the year 1938, and the remaining 400 in the year 1939. Such sales were shown in the fiduciary returns of the trust's income for those years by Mr. and Mrs. Gaylord as such trustees.

Until so sold the certificates for such shares were [287] kept in a safe deposit box in the State of California under the name of the trustees of said trust. All of said 7000 shares were so sold and delivered upon sale either in Chicago, Illinois, or the City of New York, New York. It was only in Chicago or New York that sales of such shares were made by said trustees. All such sales were made for cash, all of which was deposited by said trustees in the Harris Trust & Savings Bank in Chicago, Illinois.

The funds of the trust in the years 1936, 1937 and 1938 were kept on deposit in the names of said trustees as such trustees with said Harris Trust & Savings Bank in Chicago, Illinois. In the years 1939, 1940 and 1941 all of the bank accounts of the trust were kept with that bank and with Bankers Trust Company in said City of New York.

During the year 1938 over \$94,000.00 of the proceeds of sales of Marathon Paper Mills stock belonging to the trust theretofore made was invested by Mr. and Mrs. Gaylord as trustees of the trust

in, and by way of purchase for the trust of, certain improved income producing real properties in the State of Texas, such properties being located in the cities of Amarillo, Alice, McAllen and Harlingen in that state. The title to such property so purchased was taken in the name of Mr. and Mrs. Gaylord as such trustees. Said real property ever since has been owned and held by the trustees of the trust for the benefit of the trust and its beneficiaries.

All of the rents belonging to the trust received by its trustees from the above mentioned real property in the State [288] of Texas in the years 1938 and 1939 were included in the fiduciary returns by said trustees of the income of the trust for said years. The net rents from said real property so included amounted to \$3,859.95 for the year 1938 and \$6,370.67 for the year 1939.

Each of the two beneficiaries of the trust, Mrs. Ruppel and Mrs. Bruce, who were then entitled to all of the net income thereof in equal shares between them, included in her individual income tax return for each of the years 1936, 1937, 1938 and 1939 her one-half share of the net income of the trust for that year as shown by the fiduciary return of the trustees of the trust for that year, including her share of the net income of the trust from the rents from said Texas real property, and paid to the Collector of Internal Revenue at Los Angeles, California, with whom all of said individual and fiduciary returns were filed, income tax on her one-half of the net income of the trust. Such income

included her share of the taxable capital gain, as shown on said fiduciary returns, on the above mentioned sales in the years 1936 to 1939, inclusive, of the 7000 shares of Marathon Paper Mills Company common stock belonging to the trust.

On the foregoing facts respondent Commissioner determined and contended before The Tax Court of the United States that the trust was revocable by Mr. and Mrs. Gaylord, or either of them, at all times during the years 1936 through 1939 and, consequently, under the provisions of Section 22(a) and/or Section 166 of the Revenue Acts of 1936 and 1938 and/or the same sections of the Internal Revenue Code, all of the net [289] income of the trust for those years, which in those years had been distributed by the trustees of the trust to the beneficiaries thereof, Mrs. Ruppel and Mrs. Bruce, constituted income of Mr. and Mrs. Gaylord in the relative proportions of their respective contributions to the trust, that is, two-sevenths to Mrs. Gaylord, because she had contributed 2000 of the 7000 shares of Marathon Paper Mills Company stock to the trust, and five-sevenths to Mr. Gaylord, because he had contributed the other 5000 shares of such 7000 shares forming the original corpus of the trust, and that, accordingly, petitioner Mrs. Gaylord was chargeable for the year 1936 with \$12,516.36 of the trust's net income, for the year 1937 with \$9,449.31 of the trust's net income and for the year 1939 with \$7,201.17 of the trust's net income. On the contrary, petitioner contended to the Commissioner, and before said court, and now main-

tains that the trust has always been and is irrevocable and that none of the income thereof was ever taxable to her.

B. Question as to Basis for Computing Gain on Stock Sales.

In addition to the sales made by the trustees of the trust in the years 1936 through 1939 of Marathon Paper Mills Company stock belonging to it, petitioner sold in 1937 2100 shares of such stock then owned by her as her separate property and in 1939 500 shares of such stock similarly owned by her. The 2000 shares of said stock contributed by Mrs. Gaylord to the trust in 1935 had been received by her as a gift from Mr. Gaylord in 1930 and the 2600 shares of said stock sold by her as her own property in the years 1937 and [290] 1939 had likewise been given to her by Mr. Gaylord in February 1932. It is conceded that all of the 7000 shares belonging to the trust and constituting the original corpus thereof and said additional 2600 shares belonging to and so sold by Mrs. Gaylord have the same basis for computing gain on such sales which they had when they belonged to Mr. Gaylord before he gave them to Mrs. Gaylord. These shares have the following history.

On July 1, 1917, Mr. Gaylord was the owner of 337 shares (which purchased at various times in the period from previous to March 1, 1913, to July 1, 1917, had cost him \$34,436.50) and his partner, H. S. Clinedinst (hereinafter referred to as Cline-dinst) was the owner of 337 shares of the 726 shares

of common stock of Menasha Carton Company, the remaining 52 shares being owned by other individuals. Clinedinst also owned all of the stock of Menasha Printing Company. The respective places of business of these two companies, Menasha Carton Company and Menasha Printing Company, were across the street from each other in Menasha, Wisconsin. Clinedinst desired to consolidate or merge the assets and businesses conducted by these two corporations into a new corporation with Mr. Gaylord as its manager. For that purpose an agreement was entered into between Clinedinst and Mr. Gaylord for such consolidation or merger (hereinafter referred to as "consolidation") of said two companies, which resulted in the creation of the Menasha Printing and Carton Company. The agreement provided, among other things, that Mr. Gaylord should acquire sufficient of the stock of the new corporation to bring his holdings therein up to 40% of its outstanding stock. [291]

By way of convenience for determining between the stockholders of the Menasha Carton Company and of the Menasha Printing Company the respective proportions of interest of each of such stockholders in the new Menasha Printing and Carton Company (but not the real values involved) going into and resulting from such consolidation, an appraisal was made at the time, by a competent appraisal company, of the tangible assets of the Menasha Carton Company and the Menasha Printing Company and the values shown by such appraisal plus the "quick assets" of the two com-

panies involved was the guage used for determining as between each of the stockholders of these two companies his proportion of interest in the new company.

The consolidation was effected in August, 1917, as of July 1, 1917. In such consolidation Mr. Gaylord received for his above mentioned 337 shares of Menasha Carton Company stock and his promissory note for \$152,161.11 dated August 30, 1917, payable to the order of Clinedinst three years after date with interest at six per cent per annum (which note was paid in full in 1924), 1975 shares of the common and 410 shares of the preferred stock of the new company, Menasha Printing and Carton Company. The par or stated value of said 1975 shares of common and 410 shares of preferred stock was equal (approximately) in amount to said principal sum of said promissory note plus the value of the proportionate part of the tangible assets of the two combined companies as so appraised and their "quick assets", to which Mr. Gaylord's interest in the Menasha Carton Company entitled him. His said 337 shares of that company then had a [292] real and actual value far in excess of that determined by such appraisal of tangible assets plus such "quick assets", which determination was resorted to only for the purpose of fixing the proportion and not the real or actual value of the participation in the new Menasha Printing and Carton Company of the several owners of the two companies which were being con-

solidated into it. For such purpose no account was taken of the goodwill, earning capacity or value as a profitable going concern of either of the two companies which entered into the consolidation. The profits of the Menasha Carton Company for the first seven months of 1917 were \$56,000, and of the Menasha Printing Company for the first six months of 1917, \$187,000, in round figures. The combined profits at the end of 1917 for these two concerns operated separately for the first six months of that year and of the new company for the last six months of that year was \$315,000.00 in round figures. Determination of the value of the stock of the Menasha Carton Company and Menasha Printing Company through capitalization of such current earnings at ten times the amount thereof, a conservative rate, and taking into consideration such goodwill, earning capacity and value of their businesses as profitable going concerns results in a substantially higher value for such stock than that indicated by value of tangible assets and "quick assets" only. Such determination, taking into consideration all of the pertinent factors or elements, including not only value of tangible assets and "quick assets", but as well goodwill, earning capacity and worth as profitable going concern and business, demonstrates [293] a value of at least \$350,000.00 for Mr. Gaylord's said 337 shares of Menasha Carton Company at the time of such consolidation.

In making the consolidation, the appraised value of the physical assets plus book value of the "quick assets" of the Menasha Carton Company was de-

terminated to be \$186,000.00, while the appraised value of the physical assets plus book value of the "quick assets" of the Menasha Printing Company was determined to be \$774,000.00, a total of \$960,000.00. For all of the assets of these two corporations, including goodwill, earning capacity and value as going concerns, the new corporation, Menasha Printing and Carton Company, issued 5000 shares of common and 4600 shares of preferred stock all of the par value of \$100 per share. Of the \$186,000.00, value of tangible and "quick assets" of the Menasha Printing Company, \$86,338.84+ was allocable to Mr. Gaylord's 337 shares of stock of that company. Based on the proportion of \$86,338.84+ to \$774,000.00, Mr. Gaylord was entitled to receive for his 337 shares of Menasha Carton Company stock 449.6815 shares of common and 413.7074 shares of preferred stock of the new corporation. However, for said 337 shares he received 410 shares of the preferred and 453.3889 shares of the common stock of that company. Gaylord purchased in this transaction sufficient additional shares of such common stock to increase his common stock holdings in the new corporation to 1975 shares.

Though the exchange of his 337 shares of Menasha Carton Company stock for stock in the new corporation resulted in taxable gain to him, Mr. Gaylord, through inadvertence and [294] mistake, did not report in his income tax return for 1917 any income on such exchange. In 1922 or 1923 Mr. Gaylord purchased the remaining interest of Cline-

dinst in the Menasha Printing and Carton Company. In the meantime all preferred stock issued in the above referred to 1917 consolidation had been retired. During the interval between such consolidation and October 31, 1927, Mr. Gaylord sold to employees some small lots of his common stock of Menasha Printing and Carton Company. In 1925 he received a 100% stock dividend on the stock of that company he then held. As of date October 31, 1927, he owned and held 3357 shares of such stock.

Of the stock so held, 350 shares had been transferred by Mr. Gaylord in 1925 to his brother C. W. Gaylord for 432 shares of Robert Gaylord, Inc. stock. Thereafter C. W. Gaylord wanting to reacquire said 432 shares of Robert Gaylord, Inc., for use in connection with reorganization of the latter corporation, Mr. Gaylord proposed to sell such shares to C. W. Gaylord for \$300,000.00 but the offer was not accepted and thereafter C. W. Gaylord proposed that the previous exchange of 350 shares of Menasha Printing and Carton Company for the 432 shares of Robert Gaylord, Inc. stock be cancelled and the parties restored to the position they would have been in if the exchange had not been made. This was done and Mr. Gaylord returned to C. W. Gaylord the 432 shares of Robert Gaylord, Inc. stock and received back 352 shares of Menasha Printing and Carton Company stock, each of the parties paying over to the other all dividends received by him on the stock involved in the ex-

change [295] standing in his name during the interval. These exchanges between Mr. Gaylord and C. W. Gaylord were taxable although, through inadvertence and mistake, not considered so by Mr. Gaylord at the time.

On October 31, 1927, Menasha Products Company (such then being the name of Menasha Printing and Carton Company (was merged with Marathon Paper Mills Company. In this tax-free reorganization Mr. Gaylord received 6728 shares of the Marathon Paper Mills Company stock and \$1,038,000.00 in face value of Marathon Paper Mills Company 5% bonds in exchange for his 3357 shares of common stock of Menasha Products Company. In December, 1929, the last mentioned shares were split four shares for one.

As a result of the foregoing history of the Marathon Paper Mills Company stock sold by the trust and Mrs. Gaylord in 1936, 1937 and 1939, gain thereon was computed on a basis of \$8.21 per share and income taxes paid accordingly by Mrs. Gaylord and the beneficiary daughters of said trust.

On the foregoing facts respondent Commissioner determined and contended before The Tax Court of the United States that for the purpose of computing capital gains realized in the years 1936, 1937 and 1939 by Mrs. Gaylord and the trust from the sales of her and its shares of Marathon Paper Mills Company common stock the statutory basis for computing gain on each such sale was \$2.83542 per share and, consequently, as to such sales there was the following additional gains realized: [296]

On sale in 1936 by the trust of 4000 shares, \$21,498.32, of which 30%, or \$6,449.50, is to be taken into account under Section 117(a) of the Revenue Act of 1936;

On sale in 1937 by the trust of 1600 shares, \$8,599.33, of which 30%, or \$2,579.80, is so to be taken into account;

On sale in 1937 by Mrs. Gaylord of 2100 shares, \$11,286.62, of which 30%, or \$3,385.99, is so to be taken into account;

On sale in 1939 by the trust of 400 shares, \$2,149.83, of which 50%, or \$1,074.92, is to be taken into account under Section 117(b) of the Internal Revenue Code; and

On sale in 1939 by Mrs. Gaylord of 500 shares, \$2,687.29, of which 50%, or \$1,343.64, is so to be taken into account.

To the contrary, petitioner contended to the Commissioner, and before said court, and now maintains that the statutory basis for computing gain on each such sale was \$8.21 per share as claimed in her income tax returns and the fiduciary returns of the trust filed for those years.

On her petition for redetermination of said deficiencies said Tax Court held with respect to the subjects and issues involved in this present proceeding for review by the Circuit Court of Appeals of the United States for the Ninth Circuit. [297]

(1) that the trust was revocable during the taxable years 1936 through 1939 and that 2/7ths of

the trust income for those years was taxable to the petitioner, and

(2) that the basis for computing gain on the sales by the petitioner individually and by the trustees of the trust of Marathon Paper Mills Company common stock was \$2.84276 per share instead of \$8.21 per share as claimed by petitioner. Accordingly, said Tax Court determined the deficiencies set forth in Subdivision I of this petition, all of which deficiencies result from said two holdings.

IV.

ASSIGNMENTS OF ERROR

In making its decision as aforesaid The Tax Court of the United States committed errors, upon which petitioner relies as the basis of her proceeding herein, as follows, to-wit:

1. Said court erred in deciding that there is a deficiency of \$1,087.10 or any deficiency in income tax of petitioner for the year 1936;

2. In deciding that there is a deficiency of \$4,922.60 or any deficiency in income tax of petitioner for the year 1937;

3. In deciding that there is a deficiency of \$1,998.19 or any deficiency in income tax of petitioner for the year 1939;

4. In determining that the trust was revocable during the years 1936 through 1939 or at any time in any of said years: [298]

5. In failing to find and decide as a matter of fact and of law that the trust was at all times from

its inception in 1935 an irrevocable trust and that all of the income of the trust which was distributed by the trustees to and received by the beneficiaries of the trust in the years 1936, 1937 and 1939 was income of such beneficiaries and not income of Mr. and Mrs. Gaylord, or either of them;

6. In disregarding the legal effect of the undisputed mutual statement of Mr. and Mrs. Gaylord for the creation by them of the trust as an irrevocable trust;

7. In failing to distinguish between the effect as to Mr. and Mrs. Gaylord themselves of their contract to create the trust and the result thereof as concerns their daughters and their issue, who are the beneficiaries of the trust;

8. In concluding as a matter of law and deciding that the trust was a "voluntary trust" as that phrase is used in Section 2280 of the Civil Code of California, as amended in 1931;

9. In concluding and deciding, contrary to law, that Section 3399 of the California Civil Code has no application to the trust;

10. In disregarding the fact that it was none of the beneficiaries of the trust who were before said court insisting upon application of said Section 3399 but the two contracting parties, the creators of the trust, Mr. and Mrs. Gaylord, both of whom invoked the protection of that section;

11. In failing to apply to the trust Section 1640 [299] of the California Civil Code and Section 3401 of the same code which, with Section 3399 of the

California Civil Code, fully covers the situation of any omission of any express declaration of irrevocability in said declaration of trust dated November 7, 1935;

12. In failing to give effect to the gift tax returns of Mr. and Mrs. Gaylord wherein they referred to and identified the trust as an irrevocable trust;

13. In concluding that estoppel is not an issue in this case and in failing to decide that respondent Commissioner is estopped to claim that the trust was revocable;

14. In disregarding and failing to give effect to undisputed evidence before said court in said declaration of trust and of acts and conduct of the trustees that the trust was intended to be operative under laws of jurisdictions other than California in which other jurisdictions the trust as set forth in said declaration has always been irrevocable;

15. In deciding, contrary to law and to fact, that the \$3,859.95 rent for the year 1938 and the \$6,370.67 rent for the year 1939 of real property in the State of Texas belonging to said trust was income of a revocable trust;

16. In deciding that 2/7ths or any part of the income of the trust for the years 1936, 1937 and 1939, or any of those years, was taxable to petitioner;

17. In deciding that the basis for computing gain on the above referred to sales of Marathon Paper Mills Company common stock was \$2.84276 per share instead of \$8.21 per share [300] claimed

by petitioner, there being no evidence in the record to support any such finding and such finding ignoring the undisputed evidence of real and actual value of the stock of Menasha Carton Company and Menasha Printing Company involved in the exchange resulting in the consolidation of said two corporations in the Menasha Printing and Carton Company;

18. In failing to find and decide that under Section 202(a) of the 1926 Revenue Act the cost to Mr. Gaylord of the 350 shares of Menasha Printing and Carton Company stock which he received from his brother C. W. Gaylord in 1927 in exchange for 432 shares of Robert Gaylord, Inc. was the market or true values of such shares of Menasha Printing and Carton Company in August, 1927;

19. In holding and deciding that the \$152,161.11 paid by Mr. Gaylord to Clinedinst was the cost of 1525 shares of common stock of Menasha Printing and Carton Company received by Mr. Gaylord in the consolidation of Menasha Printing Company and Menasha Carton Company;

20. The decision of said court for which review is here prayed is not supported by the evidence;

21. Said decision is contrary to the evidence; and

22. Said decision is contrary to the law.

Wherefore, your petitioner Gertrude H. Gaylord prays that the United States Circuit Court of Appeals for the Ninth Circuit review the findings of

fact and opinion and the decision of The Tax Court of the United States entered July 14, 1944, determining a deficiency in the income taxes of petitioner for [301] the calendar years 1936, 1937 and 1939, hereinbefore referred to, and reverse and set aside said decision and direct the entry of a decision by The Tax Court of the United States in favor of petitioner determining that there is no deficiency in her income taxes for the said years 1936, 1937 and 1939; that a transcript of the record be prepared in accordance with the law and applicable rules and be transmitted to the Clerk of said Circuit Court of Appeals for filing; and for such other and further relief as to said Court may appear proper in the premises.

THOMAS A. J. DOCKWEILER

JAMES W. BONTEMS, C.P.A.

Attorneys for said Petitioner.

State of California

County of Los Angeles—ss.

Thomas A. J. Dockweiler, being first duly sworn, says: That he is one of the attorneys of record for said petitioner Gertrude H. Gaylord in this proceeding and prepared the foregoing petition and is familiar with the contents thereof; that the statements made therein are true to the best of his knowledge, information and belief; that said petition is not [302] filed for the purpose of delay and that said affiant believes said petitioner is justly entitled to the relief sought.

THOMAS A. J. DOCKWEILER

Subscribed and sworn to before me this 20th day
of September, 1944.

(Notarial Seal) J. F. KINMAN

Notary Public in and for the County of Los An-
geles, State of California.

My Commission Expires August 14, 1946.

[Endorsed]: T.C.U.S. Filed Oct. 11, 1944. [303]

In the United States Circuit Court of Appeals
for the Ninth Circuit

The Tax Court of the
United States

Docket No. 109273

GERTRUDE H. GAYLORD,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

NOTICE OF FILING OF PETITION FOR RE-
VIEW OF DECISION OF THE TAX
COURT OF THE UNITED STATES

To: Commissioner of Internal Revenue,
Internal Revenue Building,
Washington, D. C.

And To:

J. P. Wenchel, Chief Counsel,
Bureau of Internal Revenue,
Internal Revenue Building,
Washington, D. C.;

B. H. Neblett, Division Counsel,
Bureau of Internal Revenue;

Harold D. Thomas and
B. M. Coon, Special Attorneys,
Bureau of Internal Revenue;

Attorneys for said Commissioner.

You, and Each of You, Are Heroby Notified that
Gertrude H. Gaylord, the above named petitioner,

did on the day of October, 1944, file with the Clerk of The Tax Court of the United States, at Washington, D. C., a petition for review by [304] the United States Circuit Court of Appeals for the Ninth Circuit of the decision of said Tax Court heretofore rendered in the above entitled cause. A copy of said petition as filed is hereto attached and served upon you.

Dated: This day of October, 1944.

THOMAS A. J. DOCKWEILER

whose post office address is 1035 I. N. Van Nuys Building, 210 West Seventh Street, Los Angeles 14, California.

JAMES W. BONTEMS, C.P.A.

whose post office address is 215 West Sixth Street, Los Angeles 14, California.

Attorneys for said petitioner
Gertrude H. Gaylord.

Personal service of the foregoing notice of filing and of a copy of the petition for review therein referred to is hereby acknowledged this 11th day of October, 1944.

J. P. WENCHEL,

Chief Counsel,

Bureau of Internal Revenue;

B. H. NEBLETT,

Division Counsel,

Bureau of Internal Revenue;

HAROLD D. THOMAS and

B. M. COON,

Special Attorneys,

Bureau of Internal Revenue.

(Signed) J. P. WENCHEL, CAR.

Attorneys for said Commis-
sioner

[Endorsed]: T.C.U.S. Filed Oct. 11, 1944. [305]

In the United States Circuit Court of Appeals
for the Ninth Circuit

The Tax Court of the
United States

Docket No. 109138

GEORGE S. GAYLORD,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

The Tax Court of the
United States

Docket No. 109273

GERTRUDE H. GAYLORD,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

STATEMENT OF EVIDENCE

The Tax Court of the United States having con-

solidated for hearing the two causes above referred to, the same came on for hearing and were heard together by said Tax Court before the Honorable Bolon B. Turner, a judge thereof presiding, on April 2 and 3, 1943, at Los Angeles. Thomas A. J. Dockweiler, Esquire, and James W. Bontems, C.P.A. appeared on behalf of the above named petitioners George S. Gaylord and Gertrude H. Gaylord, and Byram M. Coon, Esquire, for the Honorable J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, appeared on behalf of the respondent [306] Commissioner of Internal Revenue. Thereupon the following proceedings were had and evidence taken, so far as the same pertain to or concern any of the issues involved in the petitions of said George S. Gaylord and Gertrude H. Gaylord filed in said Tax Court October 11, 1944 for review of the decisions of said Tax Court and said Honorable Bolon B. Turner, a judge of said court, entered July 14, 1944, in the matter of the respective appeals of said George S. Gaylord and Gertrude H. Gaylord so heard, to wit:

EVIDENCE ON BEHALF OF THE PETITIONERS

GEORGE S. GAYLORD,

being called as a witness by and on behalf of the petitioners, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Dockweiler:

Witness: I am the George S. Gaylord who is

(Testimony of George S. Gaylord.)

petitioner in this matter. The petitioner Gertrude H. Gaylord is my wife. She was my wife at all times herein mentioned.

I have seen before the instrument now shown me entitled "Declaration of Trust", a first impression in typewriting, bearing date November 7, 1935, and purporting to be signed by George S. Gaylord and Gertrude H. Gaylord, and bearing certificate of acknowledgment of the execution of the same by George S. Gaylord and Gertrude H. Gaylord on December 11, 1935, before J. C. Humphreys, a notary public in and for the County of Los Angeles, State of California, and also bearing a subsequent certificate [307] of acknowledgment, dated the 6th day of January, 1938, by George S. Gaylord and Gertrude H. Gaylord, in the Texas form, and also bearing a certificate by the County Clerk of this County, dated the 21st day of January, 1938 to the notarial certification of J. C. Humphreys, dated January 6, 1938, which instrument bears several recording stamps and certifications on the covers thereof. This is the instrument of trust created by myself and my wife on the date as indicated, the 7th day of November, 1935. The trust is dated the 7th day of November, 1935, and acknowledged on the 11th day of December of the same year. Exhibit B is my and Mrs. Gaylord's petitions in this matter, purporting to set forth a copy of the declaration of trust with all its endorsements, is a true and correct copy of the instrument which

(Testimony of George S. Gaylord.)

now lies before me on the witness stand and to which I have just testified.

The circumstances which led to the execution of that instrument are as follows: My wife and I agreed together some time previous to September, 1935, that we would form a trust for our children. And if she were willing to give 2,000 shares of the Marthon Paper Mills common stock, of which she was the owner, I would give 5,000 shares of the same stock to form this trust for our children, and in case of their death, for their children forever, and our instructions to our attorney here present were——

Mr. Coon: Your Honor please, I object to what appears to be the testimony about to be given as to what his oral instructions were to his attorney at the time of the execution of [308] the trust instrument. We have here the instrument itself, which speaks for itself, and any conversations between him and his attorney I object to as incompetent, and irrelevant.

Mr. Dockweiler: I will call your Honor's attention to the circumstance that it is always permissible, under the law of the State of California, to show the true consideration for any transaction. The instrument itself recites no consideration. Our position is that we have the right to show that this trust arose from a donor's agreement, that there was consideration moving to each of the trustors for the execution of this declaration of trust, and that this trust being an owner's trust,

(Testimony of George S. Gaylord.)

under the decision in what is known as the Touli case, construing the very section that has been referred to by counsel for the Government in his opening statement, it is held that a trust executed for consideration is not within the provisions in any case of that section.

That is the case, your Honor, of——

Mr. Coon: I have the case here open, if you want to refer to it.

Mr. Dockweiler: I have the reference to the California citation here. That is the case of Touli vs. Santa Cruz County Title Company, decided in 1937, reported in the 20 California Appellate, Second Series Reports, 495, and a discussion of the construction of this section is found on page 497. The section of the Code that is referred to speaks of a voluntary trust.

In the Touli case the Court said, in speaking of that very Section 2280, as amended,—— [309]

The Judge: Is that the 1931 statute?

Mr. Dockweiler: The amendment was in 1931.

The Judge: All right.

Mr. Dockweiler: This decision was in 1937, and the question was raised in the Touli case as to the construction of that amendment:

“Webster's New International Dictionary under the heading ‘voluntary-law’ gives this definition: ‘Acting, or done, of one's own free will without valuable consideration, acting, or done, without any present legal obligation to do the thing done.’ It was in the latter sense

(Testimony of George S. Gaylord.)

that the word 'voluntary' was used in the amended section, otherwise it would not have been coupled with the word 'revocable' without reservation."

That is from page 497. The following quotation is from the decision of the Court:

"It must follow, therefore, that when Section 2280 was drafted to permit the revocation of a 'voluntary' trust, that expression was not used in the broad sense found in Section 2216, but in the restricted sense of a trust created freely and without a valuable consideration or legal obligation."

That decision, incidentally, is the only one in the State of California found construing the term "voluntary trust" appearing in Section 2280, and for the further information of the Court and on which I stand to be corrected if I am [310] wrong, that section is the only place in all of the statutory law of the United States where is to be found a provision for revocation such as is there mentioned. The statute in California is an odd thing, and in argument I shall show that the construction of the Court is quite logical under the circumstances. Furthermore, it is the plain rule in California, and this is a matter of our again going back to our Civil Code, Section 1640:

"When, through fraud, mistake, or accident, a written contract fails to express the real intention of the parties, such intention is to be

(Testimony of George S. Gaylord.)

regarded, and the erroneous parts of the writing disregarded."

In *Harding vs. Robinson*, in 175 California, on pages 541 to 542, after quoting this section of the Code, 1640, the Court said:

"In this it is to be noted that the mistake arises from a failure of the contract to express the real understanding and agreement of all parties to it. That failure may arise through fraud, but this character of fraud is not fraud perpetrated to induce the contract but a fraud whereby the terms as agreed upon by the parties are suppressed or misrepresented precisely as they may be omitted or misstated by error or oversight called in that section 'mistake or accident'."

"**** mutuality of the mistake, that the minds of the contracting parties met, that they agreed [311] upon a certain thing which was to have been embodied in their contract, and that by a mistake it was either fraudulently or inadvertently omitted."

I might further call your Honor's attention to the circumstances that in the case of *Rottman vs. Hevener*, in the 54 California Appellate 474, on page 478, and that definitely again referred to this provision of the Civil Code, in the course of the decision it was stated:

"It is not claimed that by reason of fraud, accident, or mistake, there was any failure to

(Testimony of George S. Gaylord.)

cause the written instrument to express the intention of either of the parties.”

And as a consequence they applied the parol evidence rule.

These cases that deal with the inapplicability of the parol evidence rule is wherever there is evidence that there is one intention of the parties and another expressed in the instrument, and these California cases which construe the Civil Code, to which I call your Honor’s attention: *Estes vs. Delpech*, 73 California Appellate 643, on pages 646 and 647. These two cases, *Rottman vs. Hevener* and *Estes vs. Delpech*, emphasize the exception to the parol evidence rule of mutual mistake.

Then there is Section 3399 of our Civil Code. I am citing these, your Honor, to show our right to go into this matter:

“When through *** a mutual mistake of the [312] parties *** a written contract does not truly express the intention of the parties, it may be revised, on the application of a party aggrieved, so as to express that intention, so far as it can be done without prejudice to rights acquired by third persons, in good faith and for value.”

And the provisions of Section 3401 of the same Code:

“In revising a written instrument, the Court may inquire what the instrument was intended to mean, and what were intended to be its le-

(Testimony of George S. Gaylord.)

gal consequences, and is not confined to the inquiry what the language of the instrument was intended to be."

Then there is the principle spoken of in *Gardner vs. California Guaranty Company*, in 1902, in 137 California, page 71, that reformation or revision does not proceed upon the theory of a written contract or modified by extraneous parol testimony, but upon the theory that equity will conform a written contract which fails to express the intention of the parties to the actual one entered into by them.

Where there is a basis for a revision on the ground of—

The Judge: What are you reading from now?

Mr. Dockweiler: I am making a statement now, and I am going to give you the citations for it.

Where there is a basis for a revision on the ground of mutual mistake, which we contend existed here if a mistake was made—and this is simply out of an abundance of caution, because I think the rest of the record will show there is enough [313] in the acts of these parties and in the instruments signed by them to meet all of the requirements of the code section relative to the creation of an irrevocable trust, but even then I contend this, and I am giving you this out of an abundance of caution, because if the Court should hold that, contrary to the California law, on the facts as they stand, that this is a revocable trust looking at the bare statute, that is, the bare words of the Civil Code, speaking of the circumstances when a

(Testimony of George S. Gaylord.)

trust may be revoked, then, of course, there are the other circumstances that must be taken into consideration in holding to the contrary. The parties themselves without resort to court may reform the contract in accordance with their original intentions and if so reformed it speaks as of its original date.

That is from the case of *Ward v. Waterman*, 1890, 85 Cal., 488.

That matter is referred to also in 22 California Jurisprudence, page 748, and in 53 Corpus Juris, at page 1055, and I believe in the Restatement of the Law of Trusts that subject matter is treated of in Chapter 10, termination and modification of a trust, in the American Law Institute's Restatement of the Law of Trusts, with which your Honor is familiar as being probably the most recent expression, by common consent, of what the common law is, and in this State, as your Honor well knows, the common law is the rule of procedure in all those cases not specifically provided for. I am reading from Section 332 that appears in that same Chapter 10:

"If a trust is created by a written instrument and the [314] settlor intended to reserve a power of revocation but by mistake omitted to insert in the instrument a provision reserving such a power, he can have the instrument reformed and can revoke the trust."

Then there is a similar statement:

"If a trust is created by a written instrument and the settlor intended to reserve a power to

(Testimony of George S. Gaylord.)

modify the trust but by mistake omitted to insert in the instrument a provision reserving such a power, he can have the instrument reformed and can modify the trust."

Then there is the further statement which appears—and I might explain that this is in the Restatement of the Law of Trusts, and it is definitely stated, in accordance with what is the common law of the United States, that, reading Section 330:

"The settlor has power to revoke the trust if and to the extent that by the terms of the trust he reserved such a power.

"(2) Except as stated in paragraphs 332 and 333"—those are the sections that relate to revocation and modification, and omission by mistake, and the section that states that a trust can be rescinded or reformed upon the same grounds upon which a transfer of property not in trust can be rescinded or reformed—"the settlor cannot revoke the trust if by the terms of the trust he did not reserve a power of revocation."

Incidentally, that is the law of Texas. I don't think there will be any dispute about that, because Texas hasn't modified the common law, and that is the law of every state in the Union except in a very limited sense in California, and at the [315] time this trust was drafted, and this is what we expect to show, both parties intended an irrevocable trust. Their attorney was so instructed and the attorney drafted what he thought—but which proved

(Testimony of George S. Gaylord.)

to be erroneous—was in form an irrevocable trust, and since it was an irrevocable trust, in fact, despite the form, they have no right to modify, no right at any time to revoke the trust after that date in November or December of 1935 when the trust was so executed. In other words, the parol evidence rule does not apply here because this involves the recognized exception of the California cases, and the cases I cited bear that out, of a mutual mistake, and I could also cite the code section on consideration, which is the exception that is always made to statements in a written instrument in California. I don't think there is any dispute but that the weighted opinion is that the true consideration or lack of consideration or the character of consideration can always be shown, irrespective of what the trust itself pretends to show.

The Judge: Who are the parties here, Mr. Dockweiler?

Mr. Dockweiler: The parties here are Mr. Gaylord and Mrs. Gaylord, as the trustors and trustees, and the beneficiaries to that trust.

The Judge: I am not speaking of the beneficiaries. Are there any parties involved other than the two petitioners, the trustees?

Mr. Dockweiler: They declared themselves as trustees. There are no other parties involved. [316]

The Judge: Mr. Coon, do you have any comments you want to make before I rule?

Mr. Coon: Just this, your Honor: The Touli case, brought to your attention by counsel for the tax-

(Testimony of George S. Gaylord.)

payers, was apparently the only California case which attempted to construe Section 2280 of the Civil Code. It dealt with a trust that was given in connection with a mortgage note, and because of that security nature of the trust and the obligation of the trustor to protect his indebtedness, it was held that the trust there was not revocable in the circumstances of the case. What the Judge quoted from Webster's Dictionary as to what is voluntary and involuntary, and all that sort of thing, it seems to me is rather trite. It doesn't describe nor does it throw any great light on the question that was in the case as to whether or not the trust, outside of the very circumstances of the case, could be irrevocable when it didn't say that it was irrevocable. It dealt with a contractual situation.

The Judge: Inasmuch as I can't absorb in a hearing the trust instrument in all of its terms, the facts will have to be determined from what I hear here and what I get out of the documentary evidence and the relationship between the two. I shall overrule the objection.

I am going to say this for the benefit of counsel and the parties and the witnesses involved: There are certain facts that will have to be gleaned from the evidence, as indicated, oral and documentary, and I trust that you both fully appreciate that you have decidedly a family proposition, and that is very [317] closely within the family, namely, a matter between a husband and wife and themselves in two capacities, and there is also this further, this

(Testimony of George S. Gaylord.)

human frailty, that we all must recognize, that the further we get away from the happening of the event, the more nearly we say what we should have liked the thing to have been at the time, and we can imagine and appreciate and think that they were as we now would like them to be. That is human, and regardless of how much we strive, it happens to all of us.

I make that statement because I am going to ask not only counsel, but the witnesses here, and particularly the parties in this case, to be very careful in your statements and to limit yourselves in so nearly as it is humanly possible, to things that were there at the time these acts occurred, and not to things that you may now by relation back wish had been there, because I am going to have the difficult task of weighing and sifting your words and statements, and to determine if on a study of this instrument I find that I have to take into consideration those matters, in order to determine the true facts, and where you have a husband and wife dealing with themselves in family matters, it is well recognized that that is an extremely difficult proposition, and that is why the courts, from the lowest to the highest, have declared the policy that those transactions are to be most carefully and closely scrutinized.

Now, we ave that situation, and to get at the actual facts which did occur and the things that did occur at the time back in 1935, when their trust was set up, is hard and difficult, and I am asking all of you to be very careful, because it is not easy. [318]

(Testimony of George S. Gaylord.)

The objection is overruled, and the question may be answered.

Mr. Coon: If your Honor please, for the purpose of the record and our protection, I would like an exception noted.

The Judge: The record may show the exception.

The Witness: Am I supposed to go ahead?

The Judge: You may proceed with your answer.

The Witness: Well, bearing carefully your Honor's words in mind, those instructions to our attorney here present were to form an irrevocable trust, and as I believe I stated, to give this property to our children forever. The trust instrument, the declaration of trust, was thereupon prepared by our attorney and presented to me and Mrs. Gaylord. It was the instrument which I have identified when I first reached the stand, first came to the stand, and it is the instrument which is set forth, a true copy of which is set forth as Exhibit B to my and Mrs. Gaylord's petitions in this matter. I and Mrs. Gaylord signed that instrument about the date that it bears in acknowledgment, the date of acknowledgment being December 11, 1935. Mrs. Gaylord was present with me at that time, and that acknowledgment was made before J. C. Humphreys, a notary public in and for this county, before Miss J. C. Humphreys, who is a notary in my attorney's office. Subsequent to that execution of the declaration of trust, to which I have just testified, it was left with my attorney, who has retained the custody of that trust this entire period.

We caused this declaration of trust to be recorded

(Testimony of George S. Gaylord.)

in [319] the office of the County Recorder of this county on September 23, 1937, in Book 15288, page 94. There were transactions in that year which brought about the recordation of the instrument in this county. We bought real property that year located in the City of Santa Monica, in the County of Los Angeles, and I believe also in the City of Alhambra, in the County of Los Angeles. This instrument was recorded in connection with the first of those purchases. We caused this instrument to be recorded in, I believe, four separate counties in the State of Texas in connection with real property bought in Amarillo, Alice, McAllen and Harlingen, all in the State of Texas, those being towns in the State of Texas. The character of that real property was income bearing property; stores. All of it was improved property at the time we acquired it. The title or interest in the property was acquired by me and Mrs. Gaylord, as trustees, in varying degrees or proportions in each property. That is, in some cases they bought the whole property. In other cases they brought only a portion of it. In some cases we, as trustees, bought the whole property, and in other cases only a portion of it. In the case of the McAllen property, the trustees bought the whole piece. In the case of Alice, Texas, they bought the whole. In the case of Harlingen, the trustees bought a half interest and my wife bought the other half interest. In the case of Amarillo, Texas, the trustees bought a one-third interest, my wife bought a one-third interest, and I bought a one-third interest. That was

(Testimony of George S. Gaylord.)

in the year 1938. The rents received from these real properties were included in [320] the income tax returns, the fiduciary returns of the trust, and my individual and Mrs. Gaylord's individual tax returns, and the individual tax returns of our two daughters.

Our daughters are Margaret G. Ruppel, the "G" standing for Gaylord, Margaret Gaylord Ruppel, and Gertrude Gaylord Bruce. Our daughter Margaret was born November 10th, 1904, and my younger daughter Gertrude Gaylord Bruce was born May 31st, 1916. Both of these daughters are now married. Margaret married first. She is the wife of Frederick Ruppel. She was married at first to Albert Brunker in 1923. There was a divorce. Two children were born by that first husband, her present two living children. Those children are named Barbara Brunker and Robert Henry Brunker. I can give you their ages. Barbara is now 17 years of age, and her birthday is on October 14th. Robert Brunker's age is 15, and his birthday is on June 4th. Both of these children are still living. Subsequent to this daughter Margaret divorcing Mr. Bunker, she married Frederick Ruppel in 1931 and she has ever since been the wife of Frederick Ruppel, and he is still living. Our daughter Gertrude is married. Eugene L. Bruce is her husband. She married him May 29, 1937. She has one child, Ann Bruce. Ann will be five years old in April, 1943, and she is still living.

Q. Now, at the time this declaration of trust was so signed and acknowledged by you and Mrs. Gay-

(Testimony of George S. Gaylord.)

lord, did you or she, so far as you know, have any idea that you had any right to revoke or change or modify it in any way at any time whatsoever? [321]

A. Absolutely none.

Q. What, if anything, did your attorney advise you and Mrs. Gaylord in connection with the execution of this trust?

A. That it was an irrevocable trust.

Q. Was any mention made of any right to modify it or change it in any manner?

A. None.

Q. Or to alter the terms of the trust?

A. No suggestion of a suggestion.

Q. Subsequent to the declaration of the trust being so executed and acknowledged, there was a fresh acknowledgment or a second acknowledgment of it, which appears in the certificate dated January 6, 1938, before the same notary. Do you remember the purpose for which that acknowledgment was made, the form of the acknowledgment being different from the California form?

A. For the State of Texas, to conform to the laws of the State of Texas, if my memory serves me right.

That was in connection with the first recordings of this declaration of trust in the State of Texas, that I have testified to.

The 7,000 shares that were a part of the trust res, the 5,000 contributed to the trust by myself and the 2,000 contributed by Mrs. Gaylord, were subsequently sold, starting in 1936, and I believe the last

(Testimony of George S. Gaylord.)

was sold in 1938, possibly a small lot in 1939. I can't remember exactly. They were sold in the years 1936, 1937 and 1938, and possibly a small lot in [322] 1939. The certificates for the stock that was sold were kept until their sale in the State of California in a safety deposit box under the name of the trustees, myself and my wife, as trustees, until we commenced to sell them, when from time to time we sent portions of the stock to the Harris Trust and Savings Bank for convenience of delivery upon sale, all of which sales took place, of the entire 7,000 shares, in the City of Chicago, Illinois, and the City of New York, New York. The stocks were sold for cash. Every dollar of it was deposited in the Harris Trust and Savings Bank at Chicago, Illinois. Later a deposit was made in the Bankers Trust Company in New York, but not a proceed of the sale of the stock directly. Those were other funds of the trust.

I have lived in California since 1926. That was the first of my permanent residence here. I did not establish residence in this state at that time; not until 1930 or 1931. I have a little yellow slip that I received upon my applying for membership, but I think it was in 1930 or '31.

Q. You came to California then as a permanent resident in 1930, or '31, although you had visited here in 1926?

A. No. We bought a house and occupied it in 1926.

At that time our residence was in Illinois. I was commuting between California and Wisconsin and

(Testimony of George S. Gaylord.)

Illinois. I had business interests back there. I was vice-president of the Marathon Paper Mills and president of the Menasha Products Company, the successor company of the Menasha Printing & Carton Company. I gave up my office the 1st day of January, 1937, and [323] since then I have not had anything to do with the company, except as a stockholder.

Subsequent to the execution of that declaration of trust in November and December of 1935, I and Mrs. Gaylord made a gift tax return involving those 7,000 shares. We made a gift tax return in February of the year following, covering the gift to the trust, and as a part of that transaction I at that time was making out my own tax return. However, subsequently I have discontinued that. That particular return was made in my own handwriting. Mrs. Gaylord's return was made out about the same time. I have seen the original of the photographic or photostatic copy now shown to me of what appears to be a gift tax return for the calendar year 1935, with the name of the donor, George S. Gaylord, 639 Rosemont Avenue, Pasadena, California, citizenship U.S.A., residence above, which is under a certification by the Secretary of the Treasury, by direction of the Secretary of the Treasury, F. A. Birgfeld, Chief Clerk, Treasury Department, dated April 30, 1941, stating that it was a true copy of the gift tax return, Form 709, with attached schedule of George S. Gaylord, 639 Rosemont Avenue, Pasadena, California (donor), in the year 1935. This is in my own

(Testimony of George S. Gaylord.)

handwriting; was in my own handwriting. The answer "Yes" following the statement "Have you (the donor), during the calendar year indicated above, without an adequate and full consideration in money or money's worth, made any transfer exceeding \$5,000 in value (or regardless of value if a future interest) as follows? (Answer 'Yes' or 'No')" and the answer "Yes" following the [324] question: "1. By the creation of an irrevocable trust for the benefit of another", is written in my handwriting. The word "No" following the statement "(2) By making additions to an irrevocable trust previously created for the benefit of another" is in my handwriting.

Q. And is this (indicating) your signature?

A. That is my signature, a copy of my signature.

That was subscribed by me on February 3, 1936, before Alice F. Jackson, a notary public in and for Los Angeles County, California.

On the second page of that return the words "5,000 shares of common stock of Marathon Paper Mills Co. of Wausau, Wis. to a trust for benefit of Margaret G. Ruppel and Gertrude Gaylord, my daughters, Nov. 7, 1935, \$125,000" following the printed words "Description of gift, motive, donee's name and address, and relationship to donor", "Date of Gift", and "Value at Date of Gift" are all in my handwriting, this is all a copy of my handwriting. The rest of the handwriting that appears there is all in my handwriting. There was a tax on the face of it in my handwriting of \$2,531.27. The original

(Testimony of George S. Gaylord.)

of that return I sent with the check to the Collector of Internal Revenue, Los Angeles, California, and the check was for the amount of \$2,531.27. The check was never returned. The return was never returned. That is the last I have ever seen of the original return.

Q. Now, at the time that you made this return, which bears a filing stamp, "Received—filed March 10, 1936, estate [325] tax," and which bears a notarial certificate or jurat, dated February 3, 1936, was there in existence any other trust of any other kind to which you were a party? A. No.

Q. Or to which you had contributed?

A. No.

Q. Other than the trust created by the declaration of trust dated November 7, 1935, to which you have heretofore testified? Was that the only trust in existence?

A. That was the only trust which was in existence so far as I was concerned.

Q. And that was the trust you referred to in the question which you answered in connection with, "By the creation of an irrevocable trust for the benefit of another"? A. It was.

Mr. Dockweiler: At this time we would like to introduce into evidence as petitioner's first exhibit the original Declaration of Trust with the notarial certificates appearing thereon, the certificate of the Clerk of this county to the notary, which also appears on the declaration at the place where the acknowledgment in Texas form appears, and also the va-

(Testimony of George S. Gaylord.)

rious endorsements by the recording officers of Los Angeles County and the several Texas counties.

Is there any objection to that?

Mr. Coon: No objection, your Honor.

The Judge: The documents so referred to will be received as Exhibit No. 1. [326]

(Said Declaration of Trust was marked as Petitioners' Exhibit No. 1, and received in evidence.)

Mr. Dockweiler: I would like to have the privilege at the end of the proceeding to have this withdrawn if it is found by your inspection that we have set forth as Exhibit B in our petition what is a full and true copy.

Mr. Coon: That is agreeable to me, your Honor, if it is to you. I don't know how clear the exhibit to the petition is in your Honor's file.

The Judge: Well, I have the original, I suppose.

Mr. Coon: I just want an opportunity to have some one from our office and Mr. Dockweiler's office to see that inadvertently no line or page might have been left out. Those things can happen unintentionally.

Mr. Dockweiler: I might explain, Mr. Coon, that that was very carefully compared. But there is always that chance. When I say "carefully compared," the exhibits in the petition were carefully compared with the original documents, but in order that there be no possibility of any error, of course, we are entirely agreeable to that.

(Testimony of George S. Gaylord.)

Mr. Coon: If your Honor please, I can arrange to make a comparison while you are here.

The Judge: All right. That may be done.

Mr. Dockweiler: That I understand was petitioners' Exhibit No. 1?

Mr. Coon: No. 1, yes. [327]

By Mr. Dockweiler:

Q. Then, I understand, Mr. Gaylord, that the only trust that you referred to in your gift tax return, to which you have just testified, was the trust provided for in Petitioners' Exhibit No. 1?

A. Correct; it is.

Mr. Dockweiler: At this time we ask to have introduced in evidence as Petitioners' Exhibit No. 2, the certified copy of the gift tax return to which the witness has just testified.

Mr. Coon: No objection, your Honor.

The Judge: Without objection, it is received as Petitioners' Exhibit 2.

(Said gift tax return was marked as Petitioners' Exhibit No. 2, and received in evidence.)

Mr. Coon: There is no objection. As I understand the purpose for which the offer was made, there is no objection as to authenticity, but if the idea is that a gift tax or payment of a gift tax is material to this case, I object on that ground as to immateriality and irrelevancy. I take it, though, your Honor, that counsel is offering these exhibits because of the statements made therein by Mr. Gaylord in reference to the trust.

United States



of America

TREASURY DEPARTMENT

WASHINGTON

APR 5 1941

SUANT to the provisions of Section 661, Chapter 17, Title 28 of the
 United States Code (Section 882 of the Revised Statutes of the United States).
 I hereby certify that the annexed is a true copy of the gift tax return,
 Form 7, with attached schedule, of George B. Saylor, 433 Rosemont Avenue,
 Pasadena, California (donor), for the year 1935,

on file in this Department.

THE TAX COURT OF THE U. S.	
FILE 7	RECEIVED 109223
APR 2 - 1941	
REGISTERED	
EXHIBIT 2	
RESPONSE	

IN WITNESS WHEREOF, I have hereunto set my hand,
 and caused the seal of the Treasury Department to be
 affixed, on the day and year first above written.

By direction of the Secretary of the Treasury:

W. L. FIFE, JR.
 Chief Clerk, Treasury Department.

GIFT TAX RETURN

CALENDAR YEAR 1935

(TO BE FILED IN DUPLICATE UNDER THE PROVISIONS OF THE GIFT TAX ACT OF 1925 AS AMENDED)

NAME OF DONOR GEORGE S. TAYLOR
ADDRESS 639 Rosemead Ave Pasadena Calif
CITIZENSHIP U.S.A
RESIDENCE above **2580**

Have you (the donor), during the calendar year indicated above, without an adequate and full consideration in money or money's worth, made any transfer exceeding \$5,000 in value (or regardless of value if a future interest) as follows? (Answer "Yes" or "No")

1 By the creation of an irrevocable trust for the benefit of another <u>Yes</u>	4 By relinquishing a power to revoke a trust created for the benefit of another <u>No</u>	7 By paying a premium under an insurance policy in which you retain none of the legal incidents of ownership and the proceeds of which are payable to a beneficiary other than yourself or your estate <u>No</u>
2 By making additions to an irrevocable trust previously created for the benefit of another <u>No</u>	5 By permitting another to withdraw funds from a joint bank account which were deposited by you <u>No</u>	8 By conveying title to another and yourself as joint tenants or to your wife or husband and yourself as tenants by the entirety <u>No</u>
3 By permitting a beneficiary (other than yourself) to receive the income from a revocable trust, where you possessed the power of disposition and those during the year not exercised (whether such trust was created before or after the enactment on June 5, 1932 of the Gift Tax Act of 1925) <u>No</u>	6 By irrevocably assigning a life insurance policy, or by naming a beneficiary of a policy without retaining any of the legal incidents of ownership thereto <u>Yes</u>	9 By any other method, direct or indirect, whereby another received a gift <u>No</u>

If the answer is "Yes" to any of the foregoing such transfer should be fully disclosed under schedule A or B.

COMPUTATION OF AMOUNT OF NET GIFTS FOR YEAR

1 Amount of gifts for year other than charitable, etc., gifts (item c, schedule A)	<u>25278.08</u>
2 Amount of charitable, public, and similar gifts for year (item c, schedule B)	<u>50.</u>
3 Total amount of gifts for year (item 1 plus item 2)	<u>25328.08</u>
4 Amount of charitable, public, and similar gifts for year (item c, schedule B)	<u>5000.00</u>
5 Specific exemption claimed not exceeding \$30,000 for total amount of specific exemption claimed for preceding years	<u>5000.00</u>
6 Total deductions (item 4 plus item 5)	<u>5050.00</u>
7 Amount of net gifts for year (item 3 minus item 6)	<u>75278.08</u>

COMPUTATION OF TAX

1 Amount of net gifts for year (item 7, above)	<u>75278.08</u>
2 Total amount of net gifts for preceding years (item 7, schedule C)	<u>0</u>
3 Total net gifts (item 1 plus item 2)	<u>75278.08</u>
4 Tax computed on item 3	<u>12531.21</u>
5 Tax computed on item 2	<u>0</u>
6 Tax on net gifts for year (item 4 minus item 5)	<u>12531.21</u>

AMENDED 151 90-65
T-1-36 PAID 20 LINE
DATE

AFFIDAVIT

I swear (or affirm) that this return, including the accompanying schedules and statements, if any, has been examined by me, and to the best of my knowledge and belief, is a true, correct, and complete return for the calendar year stated, pursuant to the Gift Tax Act of 1925, as amended, and the regulations issued thereunder, and no transfer required by said law and regulations to be returned other than the transfer or transfers disclosed herein under schedules A or B was made by me (the donor) during said calendar year.

NOTARIAL
SEAL

Sworn to and subscribed before me this 3rd day of February 1936
Alvin S. Jackson
(Signature and title of officer administering oath)

George S. Taylor
(Signature of donor)

AFFIDAVIT

I swear (or affirm) that I prepared this return for the person named herein and that this return, including the accompanying schedules and statements, if any, is a true, correct, and complete statement of all the information respecting the donor's gift tax liability of which I have any knowledge.

NOTARIAL
SEAL

Sworn to and subscribed before me this _____ day of _____, 1936
(Signature and title of officer administering oath)

(Signature of person preparing return)

TABLE A - Gifts During Year Other than Christmas, Father's, and Similar Gifts

DESCRIPTION OF GIFT, MOTIVE, DONOR'S NAME AND ADDRESS, AND RELATIONSHIP TO DONOR	DATE OF GIFT	VALUATION DATE OF GIFT	AMOUNT
Shares of common stock of Marathon Paper Mills Co. of Wisconsin to a trust for benefit of Margaret & Ruppel and Gertrude Gaylord, my daug. ttrs.	Nov 7 1935		125000.00
5 room residence 1015 Davis St. Glendale Calif. assessed by County Tax appraiser at 1200 00 1935; Taxed 5686 as per book 110 pages 6364 map of San Angeles County.	Jan 11 '35		3000.00
Shares Salsbush Corp. 1310 E. North Hill Blvd Pasadena Calif New corporation 100 00 par. 1000 00. 400 shares amount paid in on above stock	Dec 12 1935		1000.00
Western Term Mutual Life Ins Co policy 653962 see attached	Dec 13 '35		18000.00
do do 912351 do	Dec 13 '35		1499.33
do do 2037662 do	Dec 13 '35		7662.85
do do do 6175331 do	Dec 10 '35		315.00
New York Life Ins Co			
all above Insurance policies conveyed to Gertrude H Gaylord, my wife, Margaret & Ruppel and Gertrude Long Good my daug ttrs share & share alike or to the survivors.			
			140,778.00
			15.000
			125,273.00

SCHEDULE D.—Charitable, Public, and Similar Gifts During Year

DESCRIPTION OF GIFT, NAME AND ADDRESS OF DONOR, AND CHARACTER OF INSTITUTION	DATE OF GIFT	VALUE AT DATE OF GIFT
<p>Annually 'test of Pasadena Calif</p>	<p>July 1935</p>	<p>50.00</p>

SCHEDULE C Returns, Amounts of Specific Exemption, and Net Gifts for Preceding Years (Subsequent to June 6, 1932)

[illegible]

531

21

Northwestern Mutual Life Insurance Company-face of policy \$2500.00, issued March 2, 1906, \$53962 net cash value December 13, 1935, \$1800.00 paid up as to premiums. *Am. Life*

Northwestern Mutual Life Insurance Company-face of policy \$3000.00, issued February 1, 1912, \$12851 net cash surrender value December 13, 1935 \$1499.33 paid up as to premiums. *Am. Life*

Northwestern Mutual Life Insurance Company-face of policy \$50,000.00, issued Dec. 1, 1917, \$2037662 net cash surrender value December 13, 1935, \$10,990.04 less loan on policy \$3267.09 equals net value \$7662.85 premiums \$2131.25 *Am. Life*

New York Life Insurance Company-face of policy \$2435.00 issued July 28, 1917 \$175331 net cash surrender value December 10, 1935. \$5145.84 less loan against same \$4830 equals \$315.84 net value. *Am. Life*

all values furnished by Insurance Co.

V 4



(Testimony of George S. Gaylord.)

Mr. Dockweiler: Precisely, statements.

Mr. Coon: On his side of the case, of course, that is pertinent.

The Judge: I don't think, in the light of counsel's opening statement upon estoppel and equity you can assume that is the only purpose of the gift tax return. [328]

Mr. Coon: Well, I don't like to object to them as incompetent, but I suppose it is hard to split the objection.

The Judge: I don't think you need to, so far as that is concerned. I shall overrule the objection, whatever you meant, and admit it.

Mr. Coon: I think under counsel's theory of the case he is entitled to have the documents in evidence. No objection.

The Judge: It is already received.

Mr. Dockweiler: And I call your Honor's attention in that connection that this is a statement that is made practically, in length of time, practically contemporaneously with the original declaration of trust.

By Mr. Dockweiler:

Q. Now, I show you what purports to be a photographic copy of the gift tax return for the calendar year 1935 of Gertrude H. Gaylord, 639 Rosemont Avenue, Pasadena, California, citizenship U.S.A., residence above, which bears a certificate that it is a true copy of a gift tax return, Form 708, of Gertrude H. Gaylord, 639 Rosemont Avenue, Pasadena, California (donor) for the year 1935,

(Testimony of George S. Gaylord.)

which certificate is dated April 30, 1941, and is made by direction of the Secretary of the Treasury by—it looks like “S. H. Marks.” It is “S” or “F”—the first initial is somewhat undecipherable—“H. Marks, Acting Chief Clerk, Treasury Department.”

By Mr. Dockweiler:

Q. I will ask you if you have seen the original of which that purports to be a copy. [329]

Mr. Coon: If your Honor please, I don't question that this is a true and correct copy of the original, and that the original was filed. It might shorten the record if it was just offered and put in evidence for what it says.

Mr. Dockweiler: At this time we offer in evidence as petitioners' next exhibit, No. 3, the gift tax return of Gertrude H. Gaylord for the year 1935.

The Judge: The document so offered is received and will be marked as Petitioners' Exhibit No. 3.

(Said gift tax return was marked as Petitioners' Exhibit No. 3, and received in evidence.)

By Mr. Dockweiler:

Q. Now, Mr. Gaylord, whose handwriting appears on that return?

A. My own, except for the signature.

The Witness: By the signature I mean the signature of Gertrude H. Gaylord and Alice F. Jackson, in the two places where the signature of Alice F. Jackson appears. That is my signature, “George S. Gaylord”, as the one who made out the return. The return was read by Mrs. Gaylord after I made it out and she verified it, or, rather, made it before Alice F.

United States



of America

TREASURY DEPARTMENT

WASHINGTON

1943

PURSUANT to the provisions of Section 661, Chapter 17, Title 28 of the United States Code (Section 882 of the Revised Statutes of the United States), he hereby certify that the annexed is a true and correct copy of the return of income of William C. Bayless, 1111 1/2 Street, N.W., Washington, D.C., for the year 1942.

THE TAX COURT OF THE U. S.
DIV 3 Docket 109,307
APR 2 - 1943
PETITIONER
RESPONDENT

filed this Department.

IN WITNESS WHEREOF, I have hereunto set my hand, and caused the seal of the Treasury Department to be affixed, on the day and year first above written.

By direction of the Secretary of the Treasury:

W. M. C. Bayless
Chief Clerk, Treasury Department

W1

RECEIVED
FEB 6 1936
U.S. INT. REV.
LOS ANGELES, CAL.

GIFT TAX RETURN

CALENDAR YEAR 1935

(TO BE FILED IN DUPLICATE UNDER THE PROVISIONS OF THE GIFT TAX ACT OF 1924, AS AMENDED)

NAME OF DONOR GERTRUDE H. GAYLORD
ADDRESS 629 Rosemont Ave Pasadena Calif
CITY U.S.A
RESIDENCE above

60 Calif
683

(Space for use of Donor)

5

Have you (the donor), during the calendar year indicated above, without an adequate and full consideration in money or money's worth, made any transfer exceeding \$4,000 in value (or regardless of value if a future interest) as follows? (Answer "Yes" or "No")

- 1. By the creation of an irrevocable trust for the benefit of another person
- 2. By making additions to an irrevocable trust previously created for the benefit of another person
- 3. By permitting a beneficiary (other than yourself) to receive the income from a revocable trust, when you retained the power of revocation and chose during the year not to exercise it, whether such trust was created before or after the enactment, on June 4, 1933, of the Gift Tax Act of 1933 no
- 4. By relinquishing a power to revoke a trust created for the benefit of another person
- 5. By permitting another to withdraw funds from a trust bank account which was deposited by you no
- 6. By irrevocably assigning a life insurance policy, or by assigning a beneficiary of a policy without retaining any of the legal incidents of ownership no
- 7. By paying a premium under an insurance policy in which you retain some of the legal incidents of ownership, and the proceeds of which are payable to a beneficiary other than yourself or your estate no
- 8. By conveying title to another and yourself as joint tenants or to your wife or husband and yourself as tenants by the entirety no
- 9. By any other method, direct or indirect, whereby another received a gift no

If the answer is "Yes" to any of the foregoing, such transfer should be fully disclosed under schedule A or B.

COMPUTATION OF AMOUNT OF NET GIFTS FOR YEAR

1. Amount of gifts for year other than charitable, etc., gifts (Item 1, schedule A)	40000.00
2. Amount of charitable, public, and similar gifts for year (Item 2, schedule B)	0
3. Total amount of gifts for year (Item 1 plus Item 2)	40000.00
4. Amount of charitable, public, and similar gifts for year (Item 3, schedule B)	0
5. Specific exemption claimed (not exceeding \$50,000, less total amount of specific exemption claimed for preceding years)	40000.00
6. Total deductions (Item 4 plus Item 5)	0
7. Amount of net gifts for year (Item 3 minus Item 6)	0

COMPUTATION OF TAX

1. Amount of net gifts for year (Item 7, above)	0
2. Total amount of net gifts for preceding years (Item 1, schedule C)	0
3. Total net gifts (Item 1 plus Item 2)	0
4. Tax computed on Item 3	0
5. Tax computed on Item 2	0
6. Tax on net gifts for year (Item 4 minus Item 5)	0

AFFIDAVIT

I swear (or affirm) that this return, including the accompanying schedules and statements, if any, has been examined by me, and to the best of my knowledge and belief, is a true, correct, and complete return for the calendar year stated, pursuant to the Gift Tax Act of 1924, as amended, and the regulations issued thereunder, and no transfer required by said law and regulations to be returned other than the transfer or transfers disclosed herein under schedules A or B was made by me (the donor) during said calendar year.

NOTARIAL
SEAL

Subscribed and sworn to before me this 3rd day of February, 1936
Alvin S. Jackson
(Signature and title of duly administering authority)

Gertrude H. Gaylord
(Signature of donor)

AFFIDAVIT

I swear (or affirm) that I prepared this return for the person named herein and that this return, including the accompanying schedules and statements, if any, is a true, correct, and complete statement of all the information respecting the donor's gift tax liability of which I have any knowledge.

NOTARIAL
SEAL

Subscribed and sworn to before me this 3rd day of February, 1936
Alvin S. Jackson
(Signature and title of duly administering authority)

Alvin S. Jackson
(Signature of person preparing return)

W2

SCHEDULE A—Gifts Other Than Charitable, Public, and Similar Gifts

ITEM NO.	DESCRIPTION OF GIFT, DONOR'S NAME AND ADDRESS, AND RELATIONSHIP TO DONOR	DATE OF GIFT	VALUE AT DATE OF GIFT
2000	Shares of Common Stock of Marathon Paper Mills Co. of Housatonic, Wis. Lots submitted for 1/2 year 1/2	Nov 7, 1935	\$500.00

- (a) Total \$500.00
- (b) Less total exclusions not exceeding \$1,000 for each donee (except future interests)
- (c) Included amount of gifts for year other than charitable, etc., gifts

SCHEDULE B—Charitable, Public, and Similar Gifts During Year

ITEM NO.	DESCRIPTION OF GIFT, NAME AND ADDRESS OF DONEE, AND CHARACTER OF INSTITUTION	DATE OF GIFT	VALUE AT DATE OF GIFT
	None		\$

- (a) Total \$
- (b) Less total exclusions not exceeding \$5,000 for each donee (except future interests)
- (c) Included amount of charitable, public, and similar gifts for year \$

SCHEDULE C—Returns, Amounts of Specific Exemption, and Net Gifts for Preceding Years Subsequent to June 5, 1932

CALENDAR YEAR	COLLECTION DISTRICT IN WHICH PRIOR RETURN WAS FILED	AMOUNT OF SPECIFIC EXEMPTION	AMOUNT OF NET GIFT
		\$	\$

- (a) Total amount of specific exemption claimed for preceding years \$
- (b) Total amount of net gifts for preceding years \$

(Testimony of George S. Gaylord.)

Jackson, the notary public named therein on February 3, 1936. I signed and swore to the same instrument on February 3, 1936, before Alice F. Jackson, as the one who prepared the return. Our residence through all of this period, that is, from 1935 on, was and has remained 639 Rosemont Avenue, Pasadena, California. Those premises are owned by myself and my wife in joint tenancy and that has been the state of ownership throughout the entire period and still is. [330]

Approximately \$90,000 of the proceeds of the sale of the Marathon Paper Mills stock referred to in the trust was invested in the real property purchased by the trustees in Texas.

Q. Now, when did you first hear or know of any question that might be raised as to the revocability or irrevocability of this trust?

A. The first indication of any such question came from my attorney here present, Mr. Thomas A. J. Dockweiler.

Q. Do you remember when that was?

A. In the beginning of 1940. I can't say the exact day.

I have seen the instrument now shown to me entitled "Declaration Being a Part of a Certain Declaration of Trust Dated November 7, 1935", which bears the signatures of George S. Gaylord and Gertrude H. Gaylord, a certificate of acknowledgment by George S. Gaylord and Gertrude H. Gaylord, under date of March 27, 1940, before J. C. Humphreys, a notary public in and for Los Angeles County, and

(Testimony of George S. Gaylord.)

also an oath, a separate oath, signed by George S. Gaylord and Gertrude H. Gaylord on the same date and before the same notary. The signature, "George S. Gaylord", is my signature. It appears on page 2 in two places. The other signature, "Gertrude H. Gaylord", which appears is that of my wife, Gertrude H. Gaylord. Those oaths were made by me and her, and those acknowledgments were made by me and Mrs. Gaylord before Miss J. C. Humphreys, a notary public in and for this county, on the date named, March 27, 1940. After this instrument was so signed it was left in the hands of my [331] attorney, Mr. Thomas A. J. Dockweiler, and it has been there ever since, except when it went out of his hands and into the hands of the Recorders. I caused that instrument to be recorded on March 28, 1940, in Book 17245 at page 350 of Official Records of Los Angeles County, California. We caused it also to be recorded on May 14, 1940 in Book 12, at page 495 and following, of Calaveras County records in this State and on March 8, 1940, in Vol. 706, at page 312, of the Records of Stanislaus County, in this State.

Mr. Dockweiler: At this time I would like to introduce this in evidence as the petitioners' next exhibit.

Mr. Coon: I object to this, your Honor, as incompetent, irrelevant and immaterial to the issues in this case.

The Judge: The objection is overruled. It will be marked in evidence as Petitioners' Exhibit 4.

(Testimony of George S. Gaylord.)

(Said declaration of trust was marked as Petitioners' Exhibit No. 4, and received in evidence.)

By Mr. Dockweiler:

Q. Now, Mr. Gaylord, is a true copy of that instrument set forth in yours and Mrs. Gaylord's petition in this matter as exhibit—this is preliminary, so that when the originals are withdrawn, we will have the copies.

Mr. Coon: I might state, your Honor, I will agree that the exhibit attached to the petition——

Mr. Dockweiler: Exhibit C.

Mr. Coon: ——Exhibit C purports to be a true and correct copy of Petitioners' Exhibit——

The Judge: No. 4.

Mr. Coon: ——4, which has just been introduced, and as [332] in the case of the original document, I will make a comparison with a view to withdrawal of the original, if that is what Mr. Dockweiler is seeking.

Mr. Dockweiler: Yes.

The Judge: That may be done.

By Mr. Dockweiler:

The Witness: The trust purchased certain property in Santa Monica in this county in March of 1938, for \$127,500, of which purchase price one-third was contributed by myself and my wife as trustees, one-third by my wife, and one-third by myself. The value at the time this purchase was made in March, 1938, of the improvements then on the property we estimated at \$15,000. At the time the property was rented. There were three stores, all rented.

(At 12:40 o'clock P.M. on April 2, 1943, the hearing which had commenced at 10:22 o'clock A. M. of that day was adjourned until 2:00 o'clock P.M. of the same day. The hearing was resumed at 2:00 o'clock P.M. of said day and the following proceedings were had:)

GEORGE S. GAYLORD

resumed the said.

Direct Examination (Continued)

By Mr. Dockweiler:

Witness: In our income tax returns for the trust, that I have heretofore testified to, the trust for our daughters in the years involved in these appeals, 1936, 1937, 1938 and 1939, we showed certain gains on the sale of the shares of the [333] Marathon Paper Mills Company stock, which constituted the trust estate and which are the shares referred to in the declaration of trust, which has been introduced in evidence as Petitioners' Exhibit No. 1. In those returns we showed a cost basis of \$8.21 per share. Our estimation of the profits realized was on that basis. I am acquainted with the memoranda or statements which are appended to my and Mrs. Gaylord's petitions, being Exhibits F, G and H, to my petition herein. G corrects F. F is corrected by G. Those show the bases on which this is arrived at.

In 1917 I was the owner of 337 shares of the Menasha Carton Company. My partner, S. H. Clinedinst, was the owner of an equal number of

(Testimony of George S. Gaylord.)

shares out of a total of 726 shares. The geographical location of the Menasha Carton Company and of the Menasha Printing Company, which my partner in the Carton Company owned 100 per cent, was that they were across the street from one another in the town of Menasha, Wisconsin. My partner in the Carton Company was desirous of consolidating the two businesses, and eventually that consolidation took place as of July 1, 1917. As a result of that consolidation, an agreement was entered into between Mr. Clinedinst, my partner and myself, involving the creation of the Menasha Printing and Carton Company, which consolidation was based on the assets of the two respective companies, said assets having been fixed by an appraisal by a competent appraisal company, made at the time, plus quick assets. As a result of that agreement I got for my 337 shares of Menasha Carton Company stock and my note for \$152,161.11 [334] 1,975 shares of the common stock of the new company, that is, the Menasha Printing and Carton Company, and 410 shares of the preferred stock of the same company. I don't know how far I can go in reference to the intangible consideration in this picture, because there was a very definite consideration besides what appeared on the books. The profits of the Menasha Carton Company for the first seven months of 1917 were \$56,000, which on a 12-months' basis would be \$96,000 made on assets of net worth of \$186,000. The Printing Company made the first six months of 1917 \$187,000. These, of course, are all in round figures. The com-

(Testimony of George S. Gaylord.)

bined profits at the end of the year 1917, that is, first operated separately for the six months of 1917, plus the profits for the new company which was a combination of the two old ones, was \$315,000 of net profits for the year 1917.

Mr. Coon: Pardon the interruption, your Honor. I would like to know what counsel proposes to have this testimony lead to? What is the theory?

Mr. Dockweiler: To show the real values that were involved in the acquisition by Mr. Gaylord of the stock of the new company, which later went into—that is, it later resulted in—the Marathon Paper Mills Company stock in, I think, 1927, which is the stock that is in the trust. The assets other than good will and earnings consideration were used in adjusting, as our memorandum will show you, made contemporaneously, or, a contemporaneous memorandum was used as adjusting, between the stockholders of both companies their respective shares, the assumption being that the earnings of both companies were practically the [335] same; so that in arriving at the new stock setup of the new Menasha Printing and Carton Company as a rule of thumb and for convenience we will show that all questions of earnings, even though they entered into the real value of the shares held by Mr. Gaylord and those held by Mr. Clinedinst, were eliminated and they arrived at the proportion of the stock to be held in the new company, to be held by the stockholders of the old company, on the basis of the tangible assets plus the quick assets, but exclusive of any considera-

(Testimony of George S. Gaylord.)

tion of intangible values, such as the earning power of the stock as demonstrated by what it had done or good will. In other words, Mr. Gaylord's stock, which he put into the consolidation, and Mr. Clinedinst's stock that he in turn put into the consolidation or merger, had a value, as shown by the very earnings, far in excess of the values that were used as a rule of thumb to make the proportionate distribution of the stock of the new company.

Mr. Coon: That is in excess of the book value?

Mr. Dockweiler: Far in excess of the book value.

Mr. Coon: That is the purpose of it?

Mr. Dockweiler: Yes.

The Witness: May I continue?

Mr. Dockweiler: Yes.

The Witness: There was one other consideration, and a very important one to me, most important. If we had consolidated these two companies on the basis of earnings, the most conservative of which might be called ten times earnings as the value of the stock, and by my prearranged agreement with [336] Mr. Clinedinst whereby I was to acquire 40 per cent of the common stock less what I would get by virtue of my Menasha Carton Company, put into the combination, I would have been signing a note not for \$152,000 but for closer to \$1,000,000, which made quite a different consideration to me, and there comes in the intangible consideration, namely, that Mr. Clinedinst was satisfied that I was the man to run the business and I was the one that dictated the terms of the consolidation, and I dictated them, of

(Testimony of George S. Gaylord.)

course, as much to my advantage as I could. Consequently, we took the assets as the measuring stick, not the earnings power, and for that reason alone, so that when we got through instead of having \$600 a share value in the Menasha Printing and Carton Company stock, in round figures, as would have been the case if we had used ten for one earning capacity to place a valuation on that stock, we had consequently a very low valuation, which was all, of course, to my financial advantage at the time.

I have seen the typewritten statement, a carbon, bearing no designation, but starting with the phrase, "Printing Co. resources, \$774,000," and "Carton Co. resources, \$186,000," and "Capital stock \$500,000," and then an addition of those two first mentioned figures, \$960,000, \$192.00 average per share, now shown me. To the best of my knowledge, this is the makeup of the various interests together with appraisal values and net worth values, made up by a man by the name of George J. Meyer, who was the bookkeeper of the Menasha Printing Company in and during approximately the time around July 1, 1917, and these [337] pencil notations (referring to the pencil notations which appear on the sheet) on the sheet, are in his handwriting. Those are the figures that were acted on by me and Mr. Clinedinst and the other stockholders interested in each of these companies to arrive at the division of stock in the new company. I think we ought to interject here that the other stockholders were very small, both

(Testimony of George S. Gaylord.)

as to interests and as to the number of shares. That is shown, however, in the statement itself.

Q. Now, I notice on the right-hand side of the sheet these figures, "G. S. Gaylord, Carton stock, \$44,968.15; Bonds, \$41,370.74." Then in a column headed "Capital stock to be issued par value," two sets of figures \$86,338.89 and then \$197,500; and then in a column, "add. to pay" right along the same line, \$111,161.11. Then a penciled notation under that in words as follows, "\$41,000 note," then a line drawn, then—that "41,000 note" appearing under the "\$111,161.11," and then a line drawn, and then a total there of "\$152,161.10." And then after that it says "Signed note." What is the explanation of those figures?

A. The \$86,338.89 was my participation in dollars; that is, I had that much credit with the new company against which stock, preferred stock, was to be issued.

The \$197,500 represents the common stock I was to receive by virtue of the previously made agreement with my partner. The \$111,161.11 represents the difference existing between the amount in dollars that I would have to pay on the common stock, to have the 1,975 shares. The \$41,000 is the [338] additional amount necessary for the preferred stock, making a total note of \$152,161.11.

I have seen the paper now shown to me which purports to be a promissory note for \$152,161.11, dated Menasha, Wisconsin, August 30, 1917, providing for the payment three years after date by

(Testimony of George S. Gaylord.)

George S. Gaylord to S. H. Clinedinst, or order, at the First National Bank of Menasha, \$152,161.11, bearing interest at the rate of 6 per cent per annum, payable semi-annually. That is my signature, G. S. Gaylord. That is the same note that I have been referring to in describing this makeup of the combination of the two companies, and that is the note that I gave to Mr. Clinedinst at the time. The note was paid in cash. This is the receipt for it on the face of it: "Paid in full, September 29, 1924, S. H. Clinedinst." That receipt was put on the note at or about the time it was so paid in full, and that is Mr. Clinedinst's signature.

Mr. Dockweiler: We ask at this time, your Honor, that this note be introduced, or, rather, we ask to introduce in evidence this carbon memorandum with the pencil notations, which Mr. Gaylord has just testified to, as our Petitioners' Exhibit next in order, I am offering this first, because the note follows:

Mr. Coon: No objection, your Honor.

The Judge: It will be marked in evidence as Petitioners' Exhibit No. 5.

(The said memorandum of figures so offered and received in evidence was marked Petitioners' Exhibit 5, and made a part of this record.)

[339]

Mr. Dockweiler: We also ask at this time to introduce in evidence the promissory note for \$152,161.11, just testified to and which is referred to in the penciled notations.

Printing Co. Resources \$774.
Carton Co., " 146.
Capital stock (\$500,000.) 960.

Carton Co. 186,000/960,000 of
Printing Co. 186,000/960,000 of
Std

Ptg. Co. Stockholders

	2075	2075/2075	stock	Add. to Pay	Or. DUE
J.M. Clineinst	1	1/2075	value		
Silas Ballard	1	1/2075			

Carton Co. Stockholders

J.M. Clineinst	337	337/726	00.00		\$609,966.06
E.S. Gaylord	337	337/726			
G.W. Heissler	36	36/726			
Silas Ballard	2	2/726			
Jas. Maeder	10	10/726	00.00	\$111,161.11	
Geo. Ehrlich	5	5/726			
	<u>726</u>				

Bonds

Carton Co. -
186,000/960,000 of 460,000

Printing Co.
174,000/960,000 of 460,000

Ptg. Co. Stockholders

J.M. Clineinst	2075	2075/2075	1.00	2,436.04	
S. Ballard	1	1/2075			

Carton Co. Stockholders

J.M. Clineinst	337	337/736	.00	1,219.02	
E.S. Gaylord	337	337/736			
E.W. Heissler	36	36/736	00	12,500.00	
Silas Ballard	2	2/736	00	12,500.00	
Jas. Maeder	10	10/736	00	5,000.00	
Geo. Ehrlich	5	5/736	00	2,500.00	
			<u>00</u>	<u>150,661.28</u>	

(Testimony of George S. Gaylord.)

George S. Gaylord to S. H. Clinedinst, or order, at the First National Bank of Menasha, \$152,161.11, bearing interest at the rate of 6 per cent per annum, payable semi-annually. That is my signature, G. S. Gaylord. That is the same note that I have been referring to in describing this makeup of the combination of the two companies, and that is the note that I gave to Mr. Clinedinst at the time. The note was paid in cash. This is the receipt for it on the face of it: "Paid in full, September 29, 1924, S. H. Clinedinst." That receipt was put on the note at or about the time it was so paid in full, and that is Mr. Clinedinst's signature.

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Mr. Coon: No objection, your Honor.

The Judge: It will be marked in evidence as Petitioners' Exhibit No. 5.

(The said memorandum of figures so offered and received in evidence was marked Petitioners' Exhibit 5, and made a part of this record.)

[339]

Mr. Dockweiler: We also ask at this time to introduce in evidence the promissory note for \$152,161.11, just testified to and which is referred to in the penciled notations.

Printing Co. Resources \$774,000.00
 Carton Co. " 186,000.00
 Capital stock (\$800,000.) 960,000.00 192.00 average per share.

Carton Co. 186,000/960,000 of 800,000 = \$96,875.00 Carton Co.
 Printing Co. 186,000/960,000 " 800,000 = 402,125.00 Ptg. Co.
 Stock 1800,000.00

Ptg. Co. Stockholders
 W.H. Glinesinst 2075/2076 of \$402,125.00 = \$402,930.81 4029
 Silas Ballard 1/2076 of 402,125.00 = 194.19 2
 402,125.00
Carton Co. Stockholders
 W.H. Glinesinst 337/726 of \$96,875.00 = 44,968.15 449
 Geo. Gaylord 337/726 " 96,875.00 = 44,968.15 449
 G.W. Heinsler 36/726 " 96,875.00 = 4,670.29 46
 Silas Ballard 2/726 " 96,875.00 = 266.87 3
 Jas. Moador 10/726 " 96,875.00 = 1,324.86 13
 Geo. Gehrich 6/726 " 96,875.00 = 667.18 7
 449,681.50 5000

Bonds

Carton Co. -
 186,000/960,000 of 460,000 \$89,125.00

Printing Co.
 174,000/960,000 of 460,000 370,875.00
 460,000.00

Ptg. Co. Stockholders
 W.H. Glinesinst 2075/2076 of \$370,875.00 = \$370,696.56
 Silas Ballard 1/2076 " 370,875.00 = 176.65
 370,875.00

Carton Co. Stockholders
 W.H. Glinesinst 337/726 of \$89,125.00 = \$41,370.74
 Geo. Gaylord 337/726 " 89,125.00 = 41,370.74
 G.W. Heinsler 36/726 " 89,125.00 = 4,296.60
 Silas Ballard 2/726 " 89,125.00 = 245.52
 Jas. Moador 10/726 " 89,125.00 = 1,227.60
 Geo. Gehrich 6/726 " 89,125.00 = 613.80
 41,370.74

	<u>W.H. Glinesinst</u>	<u>Capital Stock</u>	<u>Add. to Pay</u>	<u>Cr. Ptg.</u>
Ptg. Stock	\$402,930.81			
Carton "	44,968.15			
Bonds	412,067.09	\$859,966.06	\$250,000.00	\$409,966.06

	<u>Geo. Gaylord</u>	<u>Capital Stock</u>	<u>Add. to Pay</u>	<u>Cr. Ptg.</u>
Carton Stock	\$44,968.15			
Bonds	41,370.74	\$6,336.89	\$197,500.00	\$111,161.11

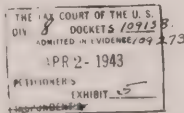
	<u>G.W. Heinsler</u>	<u>Capital Stock</u>	<u>Add. to Pay</u>	<u>Cr. Ptg.</u>
Carton Stock	\$4,670.29			
Bonds	4,296.60	\$,966.89	12,500.00	\$,583.11

	<u>Silas Ballard</u>	<u>Capital Stock</u>	<u>Add. to Pay</u>	<u>Cr. Ptg.</u>
Ptg. Stock	\$194.19			
Carton "	266.87			
Bonds	424.17	\$66.23		

	<u>James Moador</u>	<u>Capital Stock</u>	<u>Add. to Pay</u>	<u>Cr. Ptg.</u>
Carton Stock	\$1,324.86			
Bonds	1,227.60	2,561.96	5,000.00	2,486.04

	<u>Geo. Gehrich</u>	<u>Capital Stock</u>	<u>Add. to Pay</u>	<u>Cr. Ptg.</u>
Carton Stock	\$667.18			
Bonds	613.80	1,280.98	2,500.00	1,819.02

	<u>W.A. Brooks</u>	<u>Capital Stock</u>	<u>Add. to Pay</u>	<u>Cr. Ptg.</u>
Geo. J. Mayer		12,500.00	12,500.00	
Ben Metternich		12,500.00	12,500.00	
E.L. Fuss		5,000.00	5,000.00	
		5,500.00	5,500.00	
		800,000.00	150,561.28	



Memorandum from

Ex 6

JAMES W. BONTEMS

12/12/40
12/12/40
and paid
Cash. Total
payment was
borrowed from
Harris Trust Co.

J. W. Bontems
12/12/40

y.1

\$152161.11 Menasha, Wis August 30th 1907

Three Years ~~days~~ after date J. George L. Gaylord
promissory Note S. H. Cline direct ^{Order} ~~or Payment~~

THE FIRST NATIONAL BANK OF MENASHA

One Hundred Fifty Two thousand one hundred and 47/100
after one July 1st 1909
for value received with interest ~~at the rate of~~ Six per cent.
per annum, until paid, payable ~~to the order of~~ ^{to the order of} J. George L. Gaylord

That any deposited with the holder of this note certain ~~of the~~ collateral security
to this Note for value received ~~pledging~~ ^{pledging} authorizes said holder or any subsequent holder on the non-payment
of this Note at maturity to sell the said property at ~~other~~ ^{public} sale with or without further notice
to pledgee and apply the proceeds ~~thereon~~ ^{thereof}

of the Menasha Printing and Engraving Co. for 1525 Shares of Capital Stock
of the Menasha Printing and Engraving Co. dated August 26-1911 and
receive 1/10 of Capital Stock, stated in such books of the company; and with this right of
stock, same to be credited and applied upon & toward the payment of this Note
first to the payment of interest, next to principal of said note, until same be
note is fully paid.

[Handwritten signatures and notes]
J. George L. Gaylord
S. H. Cline
J. George L. Gaylord

Stat.
6 Aug 1-17. 1-2161.74

Sept 1-17 to 11-18-4124.83
" 11-18 to 1-19-4124.83
916661

161411.72
15110.00
146301.72

Int 1/18 to 1/19 335.83
1005030.5

6% div 1/19 915000
1011130.5

Int 1/19 to 1/20 8484.78
109997.83

10% div 1/20 915000
111247.83

Int 1/20 to 1/21 8484.83
129192.70

1/21 Ry 1k 5000.00
134192.70

1/21 Ry 1k 11500.00
145692.70

Int 1/21 to 1/22 8102.56
8102.56

" 1/22 to 1/23 462848
155876.30

10% div 1/23 15250.00
171126.30

Int 7/23 to 7/24 8437.58
179563.88

6% div 7/24 10950.00
190513.88

139.63320
paid up 7.17.24

Y 3

(Testimony of George S. Gaylord.)

The Judge: Without objection it will be marked as Petitioners' Exhibit No. 6 in evidence.

(The said note so offered and received in evidence was marked Petitioners' Exhibit 6, and made a part of this record.)

Mr. Dockweiler: Now, at this time, your Honor, I think the Government has a photographic copy which will serve the purpose every bit as well, and if there is no objection I will ask permission to withdraw the original note itself and to substitute the photographic copies.

Mr. Coon: I will be very glad to cooperate. How will we handle it?

The Judge: Well, the photostat may be marked, if it is agreeable with the parties, as the exhibit.

Mr. Coon: That is all right.

Mr. Dockweiler: That is entirely satisfactory, your Honor.

By Mr. Dockweiler:

The Witness: These figures that appear on Exhibit 5, to which I have just testified, are values based on an appraisal made approximately the same time as the combination was made. That appraisal did not take into consideration either earnings value or good will. It was an appraisal of physical property.

It was in 1930 that Mrs. Gaylord acquired any interest in the 7,000 shares of the Marathon Paper Mills Company stock. [340] The 2,000 shares that are mentioned in the declaration of trust which has been introduced in evidence as Petitioners' Exhibit

(Testimony of George S. Gaylord.)

I were acquired by her in that year from me. I made a gift to her of them. She did not have any interest in that stock prior to that date. She did not have any interest in the stock of the Carton Company or of the Menasha Printing and Carton Company that was involved in this.

Q. Now, what happened subsequently to your acquiring the shares of the stock, both the common and the preferred stock of the Manasha Printing and Carton Company in 1917? What happened subsequently to that?

A. Well, in 1922 or '23 I bought all of the remaining interests of Mr. Clinedinst out. There is no—as a matter of fact, that is what happened. In 1927 the Menasha Printing and Carton Company, whose name, by the way, had been changed by that time to the Menasha Products Company, was consolidated with the Marathon Paper Mills of Wausau, Wisconsin, in which consolidation I received for my 3,357 shares of Menasha Printing and Carton Company stock 6,728 shares of the Marathon Paper Mills Company common stock, and \$1,038,000 in 5 per cent bonds.

That was in 1927.

That is the transaction shown on Exhibit F attached to my petition. This Exhibit F was the formula which I used from the sale of the first bonds, made in 1928, up through to and including 1939 on all sales of bonds and stock of the Marathon Paper Mills that I owned or that any of us owned, but as I have said heretofore, that Exhibit F was wrong,

(Testimony of George S. Gaylord.)

as it failed to take [341] into consideration the transaction we have been discussing, of the Menasha Carton Company and the Menasha Printing Company. The explanation of the correction required to be made is set forth in Exhibits G and H attached to my petition in this matter now shown to me. This exhibit takes into account the earnings of the Menasha Carton Company and of the Printing Company and the resulting basis for the computation of the original cost of the Marathon stock, as shown in Exhibit H, page 2, which is the result. Those two exhibits, then, G and H, set forth the factors that were used. Those factors were based upon facts, to the best of my knowledge. With G and H I arrived at a per share basis different from what I have in F; slightly different.

Mr. Dockweiler: A higher basis than that which is actually used in the returns.

The Judge: This seems to be \$8.21.

Mr. Dockweiler: That is in "F", your Honor, and that is, as I understand it, the basis used in the return.

Mr. Coon: That is right.

Mr. Dockweiler: Correctly—that is, properly speaking, that basis is erroneous, being too small.

The Judge: Where is the basis which you say is the right basis?

Mr. Dockweiler: That appears on page 2, line 6, \$10.988 per share.

Mr. Coon: In what exhibit is that?

Mr. Dockweiler: That is in Exhibit H. [342]

(Testimony of George S. Gaylord.)

The Judge: What do the earnings have to do with this, so far as the basis is concerned?

Mr. Dockweiler: As explained, your Honor, the original formula for arriving at the division of stock between the various stockholders of the Carton Company and the Printing Company, the first two companies that Mr. Gaylord has testified to, took into consideration only the appraised values of the tangible properties, plus quick assets, and did not take into consideration in any manner the actual value of stocks as going concerns having earnings values, as demonstrated by past performance; earnings values that would have raised the value of the stock far in excess; nor was any consideration given to good will.

The Judge: What difference would that make?

Mr. Dockweiler: The difference would be this: that what Mr. Gaylord turned in from his own Carton Company, which he turned into the Carton and Printing Company amalgamation, was a very much higher value than the values indicated by merely the appraisement on the tangible assets plus the quick assets.

The Judge: Suppose it was.

Mr. Dockweiler: Then if that was the case back in 1917, then his subsequent sale of the stock would be on a higher base.

The Judge: How do you arrive at that?

Mr. Dockweiler: Because what he put into it was higher than what these values are shown here, based upon merely the tangible and quick assets. Those

(Testimony of George S. Gaylord.)

are not truly reflective. I am referring to Exhibit 5, your Honor. Those were not truly reflective of the real values of the stock of the Carton Company that he put into the amalgamation. [343]

By Mr. Dockweiler:

The Witness: The Carton Company was organized in 1911, prior, of course to there being any income tax account, and I continued my ownership of the stock of the Carton Company right up to the 1917 amalgamation of the Carton and Printing Company, less 5 or 10 shares I may have sold to employees—I don't remember—but the bulk of it, yes.

Q. Now, in between there there was a taxable transfer on which the Government and the taxpayer have both slipped up, relating to that merger?

Mr. Coon: A taxable transfer?

Mr. Dockweiler: Yes. And that added to some confusion in my associate, Mr. Bontems' mind.

Mr. Coon: In reply to that, I might say, Mr. Dockweiler, there were one or two transactions in which no income, taxable income, was reported.

Mr. Dockweiler: On the theory that there was none. That happened to be the taxpayer and that was his theory.

Mr. Coon: I don't know just what was reported. We didn't have any theory, because we didn't go into the question.

The Judge: Was this 1917 transaction a taxable transaction?

Mr. Coon: I think it was, your Honor. Back in

(Testimony of George S. Gaylord.)

that time every re-organization was a taxable transaction. The law didn't provide otherwise. You were taxed on everything, so to speak.

Mr. Dockweiler: You are right there. [344]

The Judge: Under what provision of Section 113 does your basis come?

Mr. Dockweiler: I think Mr. Bontems is better prepared to answer that, because he is more familiar with the actual figures used.

The Judge: Well, I am interested in the provision of the statute you are relying on now, not the figures. We will get to the figures after we find the provision of the statute.

Mr. Dockweiler: The values, your Honor, that Mr. Gaylord actually received from the Menasha Printing and Carton Company. Now, that is the base we are taking.

The Judge: That is the basis you are contending for?

Mr. Dockweiler: Yes. That is the cost to him. He put that into that stock, namely, the stock of the Carton Company plus cash, that is, plus the promissory note which ultimately was paid off as cash.

Mr. Coon: Stock, plus the promissory note and plus cash?

Mr. Dockweiler: And the stock had a value higher than the value that was shown in this formula that was used at the time as a rule of convenience.

Mr. Coon: And the value shown in the formula was what you might call the book value?

(Testimony of George S. Gaylord.)

Mr. Dockweiler: That was book value—or, no, it was different. It was not the book value. He testified that was the appraised value.

Mr. Coon: Not taking into consideration good will? [345]

Mr. Dockweiler: Good will, or anything else.

Mr. Coon: At this time, your Honor, I want to object to any testimony as to the effect on the value of the stock turned in at book value. It so happens that I went clear to the United States Supreme Court on that very question way back 34 years ago in the case of City Council vs. City of Estherville, where the banks at that time made that same contention of taking good will into account in a situation like this, which is not permissible. However, that is a matter for our brief.

The Judge: All right. Go ahead.

The Witness: I can't answer you, I don't think.

By Mr. Dockweiler:

The Witness: Now, in 1927 there was that further transaction I have testified to. The Menasha Products Company consolidated with the Marathon Paper Mills, and I have already testified as to what I received. Subsequently the stock was split four for one. That is what is shown in my Exhibit H.

Q. Would you explain, because it appears in the computation of the basis of the Marathon Paper Mills stock, which is appended to your petition as Exhibit H—would you explain that transaction between yourself and your brother?

(Testimony of George S. Gaylord.)

A. Yes. In 1925 my brother, who was practically the sole owner of Robert Gaylord, Incorporated, operating in St. Louis at that time, came to me and suggested that I exchange 350 shares of the Manasha Printing and Carton Company stock, common stock, for 432 shares of the stock of the Robert Gaylord, Incorporated company, which we did. The 432 shares represented [346] about, roughly, one-third the entire capitalization of the Robert Gaylord, Incorporated company. Subsequently, and some time in the latter part of 1926, possibly in the early part of 1927, my brother came to me and said that he was attempting to interest large paper mill owners in his company, and they were trying one way and another to make a financial setup with this new blood which was coming in, and was I satisfied with the arrangements as they were tentatively made from time to time. You must appreciate that there was nothing cut and dried in these negotiations, that they shift, and turn, and twist around and about. At one time in these negotiations my brother asked me if I would sell to his new group coming in the Robert Gaylord, Incorporated company picture the 432 shares which I owned, and I said I would, and I placed a value of \$300,000 on them. This was not, however, accepted, as their plans changed again, and my brother came to me and told me that he would like very much to cancel our original exchange of stock, that is, I was to give him back the 432 shares of his stock, and I was to get back the 357 shares of my stock, together with any dividends having been

(Testimony of George S. Gaylord.)

paid by either one in the meantime; in other words, to cancel the whole arrangement as though it had never existed, and that it was imperative for him to do that if he expected to carry through the very large plans which he had, and I agreed to that.

Those are the adjustments which are shown in that computation.

In addition to the 7,000 shares of Marathon Paper Mills [347] stock, shown in the declaration of trust to which reference has been made, there were also personal holdings of mine and Mrs. Gaylord's separately that were involved in sales covered by these returns. These returns that are involved here covered more than the 7,000 shares. They covered something over 24,000 shares all told.

All of the statements made on pages 20 to 37 in paragraph 5 of my petition are true.

Cross Examination

Mr. Coon: Your Honor please, the income tax returns of Mr. and Mrs. Gaylord for the years 1936 to 1939, inclusive, the years involved in this case, and also the returns of Mr. and Mrs. Gaylord as trustees for the years 1936 to 1939, inclusive, contain information in regard to the various stock transactions that have been testified to by Mr. Gaylord, and I think the returns should be offered in evidence by the respondent.

Mr. Dockweiler: No objection.

Mr. Coon: Also, in addition to the returns I have mentioned the returns of Margaret G. Ruppel for the years 1936 to 1939, inclusive, and the re-

(Testimony of George S. Gaylord.)

turns of Gertrude Gaylord Bruce for those same years. However, in 1936 she was Gertrude Gaylord.

I had better have these identified.

The Judge: If there is no objection——

Mr. Dockweiler: There is no objection.

The Judge: Why can't you just put them in?

Mr. Dockweiler: Just have all of them go in.

The Judge: And if you will read them off and let the [348] Clerk mark them, we will get the sequence of the exhibits, because I think each one should be marked separately. So if you will just read off the name and the year, we will designate the exhibit number and it can go in.

Mr. Coon: You are suggesting that I read them off, your Honor?

The Judge: Yes. Just pass them over to the Clerk so she can mark them.

Mr. Coon: The return of George S. Gaylord for the year 1936.

The Judge: That will be Exhibit A.

(The said 1936 return, George S. Gaylord, so offered and received in evidence was marked Respondent's Exhibit A, and made a part of this record.)

1936-1937

INDIVIDUAL INCOME TAX RETURN

FOR NET INCOME FROM SALARIES & WAGES & FROM OTHER SOURCES
AND INCOME FROM BUSINESS, PROFESSION, TRADE, OR SERVICE

For Calendar Year 1936

THE TAX COURT OF THE U. S.
DOCKET NO. 101137
APPEAL FROM DECISION OF THE BOARD OF TAX APPEALS
J. D. O. 1043

or fiscal year began _____ 1936, and ended _____
on the _____ day of _____ 1937

24. Balance (Carried over from 1935)	\$ 13.00
25. Less: Income tax paid in 1936	\$ 13.00
26. Married income credit (See instruction 26)	\$ 0.00
27. Balance subject to normal tax	\$ 0.00

AFFIDAVIT (See instruction 27)

I, the undersigned, do hereby certify that the return containing the accompanying schedule and statement, if any, has been true and correct to the best of my knowledge and belief, and that the same have been prepared by me or by a duly authorized agent, and that the same are true and correct to the best of my knowledge and belief.

Subscribed and sworn to before me this 6th day of February 1937
at the city of Chicago, State of Illinois
I, Oliver S. Johnson, a Notary Public in and for the State of Illinois, do hereby certify that the foregoing is a true and correct copy of the return and statement of the taxpayer.

AFFIDAVIT (See instruction 27)

I, the undersigned, do hereby certify that I have prepared this return for the person or persons named herein and that the return (including the accompanying schedule and statement, if any) is a true, correct, and complete statement of all the information required by the law in relation to the income tax liability of the person or persons named herein and that the same are true and correct to the best of my knowledge and belief.

Subscribed and sworn to before me this _____ day of _____ 1937
at the city of _____ State of _____
I, _____, a Notary Public in and for the State of _____, do hereby certify that the foregoing is a true and correct copy of the return and statement of the taxpayer.

(Testimony of George S. Gaylord.)

turns of Gertrude Gaylord Bruce for those same years. However, in 1936 she was Gertrude Gaylord.

I had better have these identified.

The Judge: If there is no objection——

Mr. Dockweiler: There is no objection.

The Judge: Why can't you just put them in?

Mr. Dockweiler: Just have all of them go in.

The Judge: And if you will read them off and let the [348] Clerk mark them, we will get the sequence of the exhibits, because I think each one should be marked separately. So if you will just read off the name and the year, we will designate the exhibit number and it can go in.

Mr. Coon: You are suggesting that I read them off, your Honor?

The Judge: Yes. Just pass them over to the Clerk so she can mark them.

Mr. Coon: The return of George S. Gaylord for the year 1936.

The Judge: That will be Exhibit A.

(The said 1936 return, George S. Gaylord, so offered and received in evidence was marked Respondent's Exhibit A, and made a part of this record.)

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

THE LAND COMMISSION OF THE U.S.A.
APR 2 - 1943
APPROPRIATION: 1
REMARKS: 1

INDIVIDUAL INCOME TAX RETURN

For Calendar Year 1936

Full name of taxpayer: **GEORGE S. LAYLARD**

Address: **639 Riverside Drive, New York 27, N.Y.**

City: **New York**

State: **Calif.**

Occupation: **Investor**

Marital status: **Married**

Number of dependents: **2**

Exemptions: **2**

Adjusted gross income: **\$11,400.00**

Less: Standard deduction: **\$1,000.00**

Less: Personal exemptions: **\$1,200.00**

Less: Charitable contributions: **\$0.00**

Less: State income tax: **\$0.00**

Less: Federal income tax: **\$0.00**

Less: Other taxes: **\$0.00**

Less: Other deductions: **\$0.00**

Less: Other credits: **\$0.00**

Less: Other adjustments: **\$0.00**

Less: Other exclusions: **\$0.00**

Less: Other deductions: **\$0.00**

Less: Other credits: **\$0.00**

Less: Other adjustments: **\$0.00**

Less: Other exclusions: **\$0.00**

Less: Other deductions: **\$0.00**

Less: Other credits: **\$0.00**

Less: Other adjustments: **\$0.00**

Less: Other exclusions: **\$0.00**

Less: Other deductions: **\$0.00**

APR 8 1937
CITY OF NEW YORK
COUNTY OF NEW YORK

JUL 6 1937
U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

59

517627
CV73911

COMPARISON OF TAX (See Instructions 28)

1. Net Income (Line 28 above)	11,400.00	2. Federal income tax (Line 27)	0.00
3. Less: Personal exemptions	1,200.00	4. State income tax (Line 27)	0.00
5. Credit for Dependents (Line 27 above)	0.00	6. Total tax (Lines 3 & 4 above)	0.00
7. Less: Income tax credit (Line 27)	0.00	8. Less: Tax on capital gains (Line 27)	0.00
9. Less: Income tax credit (Line 27)	0.00	10. Less: Tax on capital gains (Line 27)	0.00
11. Less: Income tax credit (Line 27)	0.00	12. Less: Tax on capital gains (Line 27)	0.00
13. Less: Income tax credit (Line 27)	0.00	14. Less: Tax on capital gains (Line 27)	0.00
15. Less: Income tax credit (Line 27)	0.00	16. Less: Tax on capital gains (Line 27)	0.00
17. Less: Income tax credit (Line 27)	0.00	18. Less: Tax on capital gains (Line 27)	0.00

AFFIDAVIT (See Instructions 27)

I, **George S. Laylard**, do hereby certify that the information furnished on this return is true and correct to the best of my knowledge and belief, and that I am not aware of any fraud or other illegal practice connected with this return.

AFFIDAVIT (See Instructions 27)

I, **George S. Laylard**, do hereby certify that the information furnished on this return is true and correct to the best of my knowledge and belief, and that I am not aware of any fraud or other illegal practice connected with this return.

I, **George S. Laylard**, do hereby certify that the information furnished on this return is true and correct to the best of my knowledge and belief, and that I am not aware of any fraud or other illegal practice connected with this return.

I, **George S. Laylard**, do hereby certify that the information furnished on this return is true and correct to the best of my knowledge and belief, and that I am not aware of any fraud or other illegal practice connected with this return.

SCHEDULE A—PROPERTY OR LOSS FROM BUSINESS OR PROFESSION (See Instructions 2)

1. Total receipts less business expenses (make kind of business)					
2. Labor					
3. Material and supplies					
4. Miscellaneous bought for cash					
5. Other costs (include below or on separate sheet)					
6. Price inventory at beginning of year					
7. Price inventory at end of year					
8. Loss inventory at end of year					
9. Net Cost or Gross Receipts (See Instructions 3 and 4)					
10. Net Cost or Gross Receipts (See Instructions 3 and 4)					
11. Interest on business indebtedness for year					
12. Taxes on business and business property					
13. Losses (include in table at foot of page)					
14. Bad debts (include in table at foot of page)					
15. Depreciation (include in table at foot of page)					
16. Net Profit (See Instructions 3 and 4)					
17. Total (Lines 10 to 16)					
18. Net Profit (See Instructions 3 and 4)					
19. Net Profit (See Instructions 3 and 4)					

Explaination of deductions shown on Lines 10 and 11

SCHEDULE B—INCOME FROM RENTS AND ROYALTIES (See Instructions 5)

1. Name of Property					
2. Rental					
3. Royalties					
4. Other income					
5. Total (Lines 2 to 4)					
6. Net Profit (See Instructions 5)					
7. Net Profit (See Instructions 5)					
8. Net Profit (See Instructions 5)					
9. Net Profit (See Instructions 5)					
10. Net Profit (See Instructions 5)					
11. Net Profit (See Instructions 5)					
12. Net Profit (See Instructions 5)					
13. Net Profit (See Instructions 5)					
14. Net Profit (See Instructions 5)					
15. Net Profit (See Instructions 5)					
16. Net Profit (See Instructions 5)					
17. Net Profit (See Instructions 5)					
18. Net Profit (See Instructions 5)					
19. Net Profit (See Instructions 5)					

Explaination of deductions shown on Lines 10 and 11

SCHEDULE C—CAPITAL GAINS AND LOSSES (From Sales or Exchanges Only) (See Instructions 10)

1. Description of Property					
2. Date of Acquisition					
3. Date of Disposition					
4. Cost or Other Basis					
5. Selling Price					
6. Gain or Loss					
7. Net Profit (See Instructions 10)					
8. Net Profit (See Instructions 10)					
9. Net Profit (See Instructions 10)					
10. Net Profit (See Instructions 10)					
11. Net Profit (See Instructions 10)					
12. Net Profit (See Instructions 10)					
13. Net Profit (See Instructions 10)					
14. Net Profit (See Instructions 10)					
15. Net Profit (See Instructions 10)					
16. Net Profit (See Instructions 10)					
17. Net Profit (See Instructions 10)					
18. Net Profit (See Instructions 10)					
19. Net Profit (See Instructions 10)					

Explaination of deductions shown on Lines 10 and 11

SCHEDULE D—INTEREST ON GOVERNMENT OBLIGATIONS, ETC. (See Instructions 5)

1. Description of Obligation					
2. Date of Acquisition					
3. Date of Disposition					
4. Cost or Other Basis					
5. Selling Price					
6. Gain or Loss					
7. Net Profit (See Instructions 5)					
8. Net Profit (See Instructions 5)					
9. Net Profit (See Instructions 5)					
10. Net Profit (See Instructions 5)					
11. Net Profit (See Instructions 5)					
12. Net Profit (See Instructions 5)					
13. Net Profit (See Instructions 5)					
14. Net Profit (See Instructions 5)					
15. Net Profit (See Instructions 5)					
16. Net Profit (See Instructions 5)					
17. Net Profit (See Instructions 5)					
18. Net Profit (See Instructions 5)					
19. Net Profit (See Instructions 5)					

Explaination of deductions shown on Lines 10 and 11

SCHEDULE E—INCOME FROM DIVIDENDS

1. Name of Corporation

2. Date of Acquisition

3. Date of Disposition

4. Cost or Other Basis

5. Selling Price

6. Gain or Loss

7. Net Profit (See Instructions 5)

8. Net Profit (See Instructions 5)

9. Net Profit (See Instructions 5)

10. Net Profit (See Instructions 5)

11. Net Profit (See Instructions 5)

12. Net Profit (See Instructions 5)

13. Net Profit (See Instructions 5)

14. Net Profit (See Instructions 5)

15. Net Profit (See Instructions 5)

16. Net Profit (See Instructions 5)

17. Net Profit (See Instructions 5)

18. Net Profit (See Instructions 5)

19. Net Profit (See Instructions 5)

SCHEDULE F—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 1, 10, 11, 12, 13, 14, 15, 16, 17, 18, AND 19, AND ANY CREDIT CLAIMED IN ITEM 20

1. Description of Deduction					
2. Date of Acquisition					
3. Date of Disposition					
4. Cost or Other Basis					
5. Selling Price					
6. Gain or Loss					
7. Net Profit (See Instructions 5)					
8. Net Profit (See Instructions 5)					
9. Net Profit (See Instructions 5)					
10. Net Profit (See Instructions 5)					
11. Net Profit (See Instructions 5)					
12. Net Profit (See Instructions 5)					
13. Net Profit (See Instructions 5)					
14. Net Profit (See Instructions 5)					
15. Net Profit (See Instructions 5)					
16. Net Profit (See Instructions 5)					
17. Net Profit (See Instructions 5)					
18. Net Profit (See Instructions 5)					
19. Net Profit (See Instructions 5)					

EXPLANATION OF DEDUCTIONS FOR LOSSES BY FIRE, ETC., CLAIMED IN SCHEDULE A, AND IN ITEM 18

1. Name of Property					
2. Date of Acquisition					
3. Date of Disposition					
4. Cost or Other Basis					
5. Selling Price					
6. Gain or Loss					
7. Net Profit (See Instructions 5)					
8. Net Profit (See Instructions 5)					
9. Net Profit (See Instructions 5)					
10. Net Profit (See Instructions 5)					
11. Net Profit (See Instructions 5)					
12. Net Profit (See Instructions 5)					
13. Net Profit (See Instructions 5)					
14. Net Profit (See Instructions 5)					
15. Net Profit (See Instructions 5)					
16. Net Profit (See Instructions 5)					
17. Net Profit (See Instructions 5)					
18. Net Profit (See Instructions 5)					
19. Net Profit (See Instructions 5)					

(Testimony of George S. Gaylord.)

Respondent's Exhibit A—(Continued)

1936

Dividends received

First National Bank Menasha, Wis.	\$117.00
Swift & Co.	480.
Sundstrand Machine Tool	687.50
MacIntyre Poreupine	435.
Sylvania Ind. Corp.	50.
Montgomery Ward	120.
Southland Royalty	800.
United Corporation	200.
Masonite Corp.	22.
	<hr/>
	2911.50

G. S. G.

Held less than one year

1936	Purchases	
Jan. 7 300 Swift $24\frac{1}{2}$		\$ 7402.50
June 8 100 Montgomery Ward $36\frac{7}{8}$		3707.50
do do 37		3720.10
Apr. 14 500 N.Y. Central $41\frac{7}{8}$		21037.50
June 8 250 Sunstrand M. Tool $15\frac{3}{4}$		3937.50
Oct. 26 1000 Coml. & Southen 4		4100.
Feb. 14 300 B. & O. Ry. $21\frac{1}{4}$		6427.50
Feb. 15 200 Sylvania Ind. $29\frac{1}{4}$		5850.
Feb. 6 Rep. Iron & Steel $22\frac{1}{4}$		6728.55
Boothe Gillette & Co. Joint %		24.57 my share
		<hr/>
		62911.15

Sales

Nov. 30 100 Swift $24\frac{3}{4}$	2451.90
do $24\frac{1}{2}$	2426.90
do $24\frac{1}{4}$	2401.75
Sept. 10 100 M. Ward $48\frac{3}{4}$	4845.90
Sept 18 do $49\frac{1}{4}$	4895.90
Sept 10 300 N. Y. Cent. $45\frac{7}{8}$	13675.22
Oct. 9 200 do $49\frac{1}{4}$	9791.80

(Testimony of George S. Gaylord.)

Respondent's Exhibit A—(Continued)

1936			Sales	
Sep. 18	50 Sund. M. Tool	183 $\frac{1}{4}$	922.98	
	do	191 $\frac{1}{4}$	947.98	
	do	20	984.98	
	do	201 $\frac{1}{4}$	997.47	
	do	21	1034.97	
Nov. 30	1000 Coml. South.	35 $\frac{5}{8}$	3479.90	
Nov. 30	100 B. & O. Ry.	221 $\frac{1}{4}$	2203.45	
Nov. 30	100 do	22	2178.45	
Nov. 30	100 do	22	2178.46	
Aug. 21	125 Sylvania Ind.	301 $\frac{1}{4}$	3738.75	
Aug. 21	25 do	301 $\frac{1}{2}$	754.	
Aug. 21	50 do	301 $\frac{1}{2}$	1507.70	
Apr. 14	300 Rep. Iron & S	253 $\frac{3}{8}$	7520.99	
			68939.45	
			Gain	\$6028.30
Joint Acct. with Boothe Gillette my share			Gain	24.57
				6052.87

[Figures penciled in margin] :

68,939.45

62,911.15

6,028.30

Held over one year

1935			Purchases	
June 17	\$4000. Yosemite 5% R.R. Bonds	201 $\frac{1}{2}$	840.	
June 17	6000. do	203 $\frac{3}{4}$	1275.	
			2115.	
1936			Sales	
Sept. 12	10000 Yosemite 5% Bonds	381 $\frac{1}{2}$	3796.	
			Gain \$1681.00	1344.80
			80% of \$1681.	

(Testimony of George S. Gaylord.)

Respondent's Exhibit A—(Continued)

CAPITAL GAIN SHEET No. 2

Held over 2 years

Purchases

Sept. 23, 1932 88 Masonite Corp., 53 $\frac{1}{2}$\$ 495.00

Sales

Mar. 30, 1936 88 Masonite Corp., 943 $\frac{1}{4}$ 8,306.56

Gain \$7,811.56

60% of gain.....\$4,686.94

Held over 10 years

Purchases

Mar. 1, 1913 4950 Marathon Paper Mills

Co., \$8.21\$40,639.50

See attached for basis of cost price

Sales

1936 All the following are Marathon sales

Jan. 4 350 25\$ 8,750.00

do 8 350 26 9,100.

do 17 350 27 9,450.

Mar. 16 300 27 8,096.25

do 20 300 28 8,396.25

do 20 300 29 8,696.25

Apr. 3 250 30 7,496.88

do 3 175 31 5,422.80

do 3 75 31 2,323.71

May 19 250 33 8,246.88

Jun. 10 250 33 $\frac{1}{4}$ 8,309.38

Dec. 3 1000 42 41,938.82

Dec. 4 500 42 20,969.33

Dec. 11 500 42 20,969.96

4950 168,166.51

Less cost 40,639.50

Gain 127,527.01

30% of such gain \$ 38,258.10

Total gain, 2 sheets \$ 50,342.71

(Testimony of George S. Gaylord.)

Respondent's Exhibit A—(Continued)

SHOWING COST OF MARATHON PAPER
MILLS COM. STOCK

Menasha Printing and Carton Co.

Value Marth 1 1913\$ 350,000.00

July 1, 1917, invested 152,500.

\$ 502,500.

Less: Preferred Stock sold, July 1917..... 20,000.

482,500.Received for 3357 shares Menasha Printing and Carton Com-
pany stock, securities of Marathon Paper Mills Co., as follows:

\$1,038,000.00 par 5½% Bonds\$1,038,000.00

6728 shares Common Stock @ 130.30 876,658.40

\$1,914,658.40

\$1,038,000.00 equal 54.21% of total received

876,658.40 equals 45.79% of total received

45.79% \$482,500.00 equals \$220,936.75 or Original cost of 6728
shares of common stock or \$32.84 per share.Stock was divided four for one, making original cost of present
common shares \$8.21 per share.

[Figures penciled in margin]:

1917

3357

2

6714

Explanation of Joint % capital gain
of 2057

Boothe, Gillette & Co

MEMBER LOS ANGELES STOCK EXCHANGE

254 SOUTH SPRING STREET
LOS ANGELES

TELEPHONE
MICHIGAN 5221

MR GEORGE S GAYLARD
620 BOULEVARD AVE
PASADENA CALIF

JT ADST

DATE	QUANTITY		DESCRIPTION	PRICE	DEBITS	CREDITS	BALANCE
	BOUGHT	SOLD					
12/15	6000		ALLEGHENY CORP 5/30 STPS	30 1/2	2040 00		
	2000		DO	30 1/2	705 00		
1/5		6000	DO	30 1/2		2040 00	
1/6		4000	DO	30 1/2		1200 00	
2/7	10000		AMCO GAS & ELE 4/70	30 1/2	3030 00		
2/16		10000	DO	30 1/2		3030 00	
2/11	10000		DO	30 1/2	3034 44		
2/17		10000	DO	30 1/2		3030 00	
3/4	200		ELECT POW & LT	10 1/2	2040 00		
	200		UNITED GAS CORP	7 1/2	1400 00		
3/9	2000		MISSOURI KANSAS TEX 5/57	45 1/2	910 00		
	3000		DO	45 1/2	1357 50		
	100		NORTHERN STATES PUB A	35 1/2	3540 00		
3/13		200	ELECTRIC POW & LT	13 1/2		2660 00	
		200	UNITED GAS CORP	7 1/2		1400 00	
		100	NORTHERN STATES PUB A	35 1/2		3540 00	
3/16	50		ALLEGHENY CORP PPS 5/30 STPS	10 1/2	506 00		
	50		BALTIMORE & OHIO	14 1/2	725 00		
		2000	MISSOURI KANSAS TEX 5/57	45 1/2		910 00	
3/18	100		TEXAS PACIFIC COAL & OIL	13 1/2	1350 00		
	100		TEXAS PACIFIC LAND TRUST	13 1/2	1350 00		
3/17	50		ILLINOIS CENTRAL	24 1/2	1225 00		
		50	BALTIMORE & OHIO	19 7/8		977 75	
4/13	100		TEXAS PACIFIC LAND TRUST	11 5/8	1100 00		
	100		TEXAS PACIFIC COAL & OIL	12 1/2	1250 00		
7/18	100		PACARD MOTORS	11 1/2	1125 00		
	50		DO	11 1/2	562 50		
	50		UNITED GAS CORP	8 1/2	412 50		
	100		DO	8 1/2	825 00		
		100	TEXAS PACIFIC COAL & OIL	12 1/2		1250 00	
		50	TEXAS PACIFIC COAL & OIL	12 1/2		625 00	
		100	TEXAS PACIFIC LAND TRUST	12 1/2		1250 00	
		50	TEXAS PACIFIC LAND TRUST	12 1/2		625 00	

Boothe, Gillette & Co

MEMBER LOS ANGELES STOCK EXCHANGE

610 SOUTH SPRING STREET

LOS ANGELES

TELEPHONE

MICHIGAN 622

MR GEORGE S BAYLORD

JT ADOCT

PG 2

QUANTITY	DESCRIPTION	PRICE	DEBITS	CREDITS	BALANCE
7/23 300	SYMINGTON GOULD NEW COM \$1 00 PAR	9 3/8	2812 50		
80	ALLENBURY PPS \$400 BARR	35		1700 96	
7/27 80	ILLINOIS CENTRAL	25		1250 97	
300	SYMINGTON GOULD NEW COM \$1 00 PAR	9 3/8		2800 30	
7/28 100	PACKARD MOTORS	13		1275 47	
80	PACKARD MOTORS	12 7/8		625 40	
80	TEXAS PACIFIC LAND TRUST	30		475 70	
30	TEXAS PACIFIC COAL & OIL	11 1/2		350 70	
100	UNITED GAS CORP	6 5/8		640 44	
50	UNITED GAS CORP	6 1/4		315 40	
	TOTAL PURCHASES & SALES		34075 35	34005 64	
	DIV 200 TEXAS PAC COAL & OIL			50 00	
	INTEREST CHARGES		31 17		
	TOTAL JOINT ADOCT PROFIT				

14-5



(Testimony of George S. Gaylord.)

Respondent's Exhibit A—(Continued)

1936 INTEREST RECEIVED

Pulliam Mortgage Co., Los Angeles	\$163.76
Bank of Montreal	72.39
	<hr/>
	\$236.15

[Endorsed]: T.C.U.S. Filed Apr. 2, 1943.

Mr. Coon: George S. Gaylord's return for 1937.
The Judge: That will be Exhibit B.

(The said 1937 return of George S. Gaylord, so offered and received in evidence, was marked Respondent's Exhibit B, and made a part of this record.)

1937

UNITED STATES

NOT INVESTIGATED

INDIVIDUAL INCOME TAX RETURN

1937

Do not write in this space

(Auditor's Stamp)

Treasury Department (FORM 1040) Internal Revenue Service

FOR NET INCOME FROM SALARIES, WAGES, DIVIDENDS, AND
DIVIDENDS OF MONEY TRUSTS, AND INCOME FROM
OTHER SOURCES REGARDLESS OF AMOUNTS

For Calendar Year 1937 or Fiscal Year

beginning _____, 1937, and ended _____, 1938

Print name and address plainly (See instruction 10)

GEORGE S. GAYLORD

639 Rosemont Ave

Pasadena

Calif

Do not write in this space

1014

800-100

MAR 3 1938

9656.84

THE TAX COURT OF THE U. S.

DOCKET 2

APR 2 - 1943

FEDERAL

EXHIBIT B

RESPONDENT'S

INCOME

1. Salaries and other compensation for personal services (From Schedule A) 20736
2. Dividends from domestic and foreign corporations 284319
3. Interest on bank deposits, notes, mortgages, etc. 500
4. Interest on corporation bonds
5. Taxable interest on Government obligations, etc. (From Schedule B)
6. Income (or loss) from partnerships, syndicates, pools, etc. (Furnish name and address)
7. Income from fiduciaries (Furnish name and address)
8. Rents and royalties (From Schedule C) 7519 00
9. Income (or loss) from business or profession (From Schedule D) 3278 00
10. Gain (or loss) from sale or exchange of property (From Schedule F) 29663 00
11. Other income (state nature; use separate schedule if necessary)
12. Total income in items 1 to 11 (enter nontaxable income in Schedule H)

DEDUCTIONS

13. Contributions (explain in Schedule G) 225
14. Interest (explain in Schedule G)
15. Taxes (explain in Schedule G) 10422 01
16. Losses by fire, storm, etc. (explain in Schedule G)
17. Bad debts (explain in Schedule G)
18. Other deductions authorized by law (explain in Schedule G) 5512 10
19. Total deductions in items 13 to 18
20. Net income (Item 12 minus item 19) 16184 11

COMPUTATION OF TAX

21. Net income (Item 20 above)	16184 11	22. Normal tax (4% of item 21)	647 36
23. Less: Personal exemption (From Schedule I)	225 00	23. Surplus on item 24 (see instruction 23)	767 36
24. Credit for dependents (From Schedule I)	400 00	24. Total tax (Item 22 plus item 23)	1414 72
25. Balance (net income)	15959 11	25. Less: Income tax paid at source	
26. Less: Interest on Government obligations (Item 5)	300 00	26. Income tax paid to a foreign country or U. S. possession	
27. Earned income credit (From Schedule J)	300 00	27. Balance of tax (Item 24 minus items 25 and 26)	
28. Balance subject to normal tax	15659 11		

NOTE—One form must be filed with this original return (see instruction 10). A duplicate copy is not filed.

Page 2

Schedule A—INCOME FROM SALARIES AND OTHER COMPENSATION FOR PERSONAL SERVICES. (See Instructions 3)

1. Name and Address of Employer or Name of Service	2. Amount	3. Income Reported or Expected During the Year	4. Amount

Total column 2 minus total column 4 (enter on line 1, page 1)

Schedule B—INTEREST ON GOVERNMENT OBLIGATIONS, ETC. (See Instructions 5)

1. Obligations or Securities	2. Amount Owed at End of Year	3. Interest Reported or Expected During the Year	4. Interest From Taxable Sources	5. Interest on Excluded Securities
(a) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia, or United States possessions			AB	00000000 00
(b) Obligations issued under Federal Farm Loan Act, or under such Act as amended			AB	00000000 00
(c) Obligations of United States issued on or before September 1, 1917			AB	00000000 00
(d) Treasury Notes, Treasury Bills, and Treasury Certificates of Indebtedness			AB	00000000 00
(e) U. S. Savings Bonds and Treasury Bonds				
(f) Obligations of instrumentalities of the United States (other than obligations to be reported on (d) above)			None	
(g) Total (enter total of column 5 on line 5, page 1)				

Schedule C—INCOME FROM RENTS AND ROYALTIES. (See Instructions 6)

1. Kind of Property	2. Amount	3. Depreciation (enter in Schedule D)	4. Net Income	5. Other Income (enter in Schedule D)	6. The Profit Share (enter in Schedule D)
Spokane Institution Building	1225.00				1225.00
Household	221.00	100.00		165.50	415.50
Household	282.13	63.00		104.00	2089.13
Explanation of deductions claimed on column 5: Home in S - Fire Insurance					7819.70

Schedule D—PROFIT (OR LOSS) FROM BUSINESS OR PROFESSION. (See Instructions 7)

1. Total receipts (state nature of business or profession)	2. COST OF GOODS SOLD	3. OTHER BUSINESS DEDUCTIONS	4. Total Deductions	5. Net Profit (or Loss)
		10. Salaries not included as "Labor" (do not deduct compensation for yourself)		
		11. Interest on business indebtedness		
		12. Taxes on business and property		
		13. Labor (explain in Schedule C)		
		14. Bad debts arising from sales or services		
		15. Depreciation, obsolescence, and depletion (explain in Schedule E)		
		16. Rent, repairs, and other expenses (explain below or on separate sheet)		
		17. Total (lines 10 to 16)		
		18. Total deductions (line 9 plus line 17)		
		19. Net profit (or loss) (line 1 minus line 18) (enter on line 9, page 1)		

Explanation of deductions claimed on lines 5 and 16

Schedule E—EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES C AND D

1. Description of Property	2. Date Acquired	3. Cost or Other Basis	4. Depreciation Allowed	5. Depreciation Claimed	6. Total Depreciation	7. Remaining Basis	8. Date of Disposal	9. Amount Received
United States Trust Co. Building	1921	105000	20000	4000	24000	81000	1933	10000
Household	1921	10500	600	970	1250	9250		

(Testimony of George S. Gaylord.)

Respondent's Exhibit B—(Continued)

SCHEDULE F.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF PROPERTY. (See Instruction 10)

[Followed by printed form not filled in]

SCHEDULE G. — EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 13, 14, 15, 16, 17, AND 18

Real estate and personal property taxes	\$ 7,797.47
Club dues tax	21.50
California Income Tax	2,540.33
Auto license tax	72.71
	<hr/>
	\$10,432.01
Charities—Community Chest	\$ 160.00
Red Cross	50.00
Constitutional Society	25.00
Paid McKinley & Co., Inc., 71 Broadway, N. Y. City fee financial advisor	\$ 5,000.00
Paid Dockweiler & Dockweiler, attorneys, for advise financial matters	517.10

SCHEDULE H.—NONTAXABLE INCOME OTHER THAN INTEREST REPORTED IN SCHEDULE B.

(See Instruction 12)

[Followed by printed form not filled in]

SCHEDULE I.—EXPLANATION OF CREDITS CLAIMED IN ITEMS 22 AND 23. (See Instructions 22 and 23)

(a) Personal Exemption

Status	Number of Months During Year in Each Status	Credit Claimed
Single, or married and not living with husband or wife		
Married and living with husband or wife	12 yrs.	\$2500.00
Head of family (explain below)		400.00
Reason for credit: 1 grandchild		
Name of dependent and relationship: age 12 years.		

(b) Credit for Dependents

[Followed by printed form not filled in]

(Testimony of George S. Gaylord.)

Respondent's Exhibit B—(Continued)

**SCHEDULE J.—COMPUTATION OF EARNED INCOME
CREDIT. (See Instruction 26)**

[Followed by printed form not filled in]

QUESTIONS

1. State your principal occupation or profession: rancher.
2. Check whether you are a citizen (checked) or resident alien.
3. If you filed a return for the preceding year, to which Collector's office was it sent?: Los Angeles.
4. Are items of income or deductions of both husband and wife included in this return? (See Instruction B): no.
5. State name of husband or wife if a separate return was made, and the Collector's office to which it was sent: Gertrude H. Gaylord, 639 Rosemont Ave., Pasadena, Calif.
6. Check whether this return was prepared on the cash (checked) or accrual basis.
7. Did you at any time during your taxable year own directly or indirectly any stock of a domestic or foreign personal holding company? (Answer "yes" or "no"): no. If answer is "yes", attach schedule required by Instruction M.

AFFIDAVIT. (See Instruction F)

I/we swear (or affirm) that this return (including any accompanying schedules and statements) has been examined by me, us, and to the best of my/our knowledge and belief is a true, correct, and complete return, made in good faith, for the taxable year stated, pursuant to the Revenue Acts of 1936 and 1937 and the regulations issued thereunder.

GEORGE S. GAYLORD

(Signature) (See Instruction F)

If this is a joint return (not made by agent) it must be signed by both husband and wife and sworn to before a proper officer by the spouse preparing the return, or if neither or both prepare the return then by both spouses.

Subscribed and sworn to by George S. Gaylord before me this 3rd day of March, 1938.

(Seal)

Illegible

(Signature and title of officer administering oath)

A return made by an agent must be accompanied by power of attorney. (See Instruction F.)

(Testimony of George S. Gaylord.)

Respondent's Exhibit B—(Continued)

G. S. G.

Held under one year

Bought

Jan. 7, 1937	100 Phillips Pet., 52	\$5,223.25
Jan. 4, 1937	100 Cont. Oil Del., 42½	4,270.00
Oct. 20, 1937	172-86/100 Mara. Pfd. (Div. \$3.00 per share on Com.)	17,286.00
Jan. 11, 1937	\$9,000—Third Ave. 5-1960, 41	3,713.85
Jan. 11, 1937	\$10,000—Third Ave. 5-1960, 41	4,126.50
Jan. 12, 1937	\$1,000—Third Ave. 5-1960, 40¾	410.15
Mar. 15, 1937	\$18,000—Third Ave. 5-1960, 39	7,066.60
Mar. 15, 1937	\$2,000—Third Ave. 5-1960, 38½	775.00
		<hr/>
		42,871.35

Sold

Sept. 14, 1937	100 Phillips Pet., 54	5,368.39
Sept. 23, 1937	100 Cont. Oil, 39⅛	3,888.17
Nov. 16, 1937	64 Marathon Pfd., 89 } 86	5,692.80
Nov. 16, 1937	58 " " 90 } 172—	5,217.10
Nov. 18, 1937	50 - 86/100 " 89 } 100	4,523.99
Aug. 24, 1937	5,000 Third Ave. 5s, 15¼	747.98
July 27, 1937	10,000 Third Ave. 5s, 17	1,670.96
July 27, 1937	5,000 Third Ave. 5s 17½	860.48
Dec. 28, 1937	2,000 Third Ave. 5s, 5½	106.69
Dec. 28, 1937	8,000 Third Ave. 5s, 5⅜	416.79
Dec. 28, 1937	10,000 Third Ave. 5s, 5⅜	520.98
		<hr/>
		29,014.33

Bot \$42,871.35

Sold 29,014.33

Loss 13,857.02

(Testimony of George S. Gaylord.)

Respondent's Exhibit B—(Continued)

G. S. G.

Held one year less than two—80%

Bought—

June 8, 1936—250 Sundstrand Meh. Tool, 15 $\frac{3}{4}$	\$ 3,937.50
Oct. 26, 1936—200 United Corp, 7 $\frac{3}{8}$	1,495.00
Oct. 26, 1936—800 United Corp., 7 $\frac{1}{2}$	6,080.00

\$11,512.50

Sold—

Aug. 4, 1937—100 Rites Sund. M. Tool, 3/32.....	9.33
Aug. 4, 1937—150 Rites Sund. M. Tool, 3/32.....	9.97
Sept. 3, 1937—100 Sundstrand M. Tool, 20	1,982.21
Sept. 28, 1937—150 Sundstrand M. Tool, 17 $\frac{1}{2}$	2,598.33
Dec. 28, 1937—1,000 United Corp., 31 $\frac{1}{8}$	2,954.93

\$ 7,554.77

Bought\$11,512.50

Sold 7,554.77

\$ 3,957.73

80%Loss\$ 3,166.1840

G. S. G.

Held between 2 and 5 years—60%

Bought—Shares

May 31, 1933—1400 Southland Royalties, 47 $\frac{1}{8}$	\$ 6,825.00
---	-------------

Sold—

Sept. 23, 1937—100 Southland Royalties, 83 $\frac{1}{4}$	\$ 861.78
Sept. 23, 1937—200 Southland Royalties, 85 $\frac{1}{8}$	1,698.56
Sept. 23, 1937—1100 Southland Royalties, 81 $\frac{1}{2}$	9,204.59

\$11,764.93

Sold\$11,764.93

Bought 6,825.00

4,939.93

60%Gain\$ 2,963.958

(Testimony of George S. Gaylord.)

Respondent's Exhibit B—(Continued)

G. S. G.

Held more than 5 years, less than 10 years—40%

Bought—

Feb. 4, 1928—\$10,000 City of Ashville, N. C., 4³/₄

S1966-108,401\$10,840.10

Sold—

Through recapitalization received \$10,000.00 City
of Ashville Bonds due July 1, 1976, paying 1%.

Sold the above:

July 14, 1937—34\$ 3,379.17

\$ 7,460.93

40%

Loss.....\$2,984.372

G. S. G.

Held over 10 years—30%

Bought—

See attached establishing value, as per previous
years, Marathon Com. at \$8.21 per share as of
March 1, 1913.

Sold—

Feb. 9, 1937— 500 Marathon Com., 65\$ 32,493.75

March 12, 1937— 100 Marathon Com., 78 7,767.58

March 17, 1937—2,000 Marathon Com., 78 155,963.39

March 17, 1937— 100 Marathon Com., 78½ 7,818.20

Apr. 1, 1937— 100 Marathon Com., 80 7,969.75

2,800*

Cost—2800 shares @ \$8.21 per share 22,988.00

189,024.67

30%

\$ 56,707.40

* In pencil.

(Testimony of George S. Gaylord.)

Respondent's Exhibit B—(Continued)

SHOWING COST OF MARATHON PAPER MILLS
COM. STOCK

Menasha Printing and Carton Co.

Value Mar. 1, 1913\$ 350,000.00

July 1, 1917, invested 152,500.00

\$ 502,500.00

Less preferred stock sold, July, 1917 20,000.00

\$ 482,500.00Received for 3,357 shares Menasha Printing and Carton Co.
stock, securities of Marathon Paper Mills Co., as follows:

\$1,038,000.00 par 5½% Bonds\$1,038,000.00

6,728 shares Common stock @ \$130.30 876,658.40

\$1,914,658.40

\$1,038,000.00 equals 54.21% of total received.

\$876,658.40 equals 45.79% of total received.

45.79% of \$482,500.00 equals \$220,936.75 or original cost of
6,728 shares of common stock or \$32.84 per share.Stock was divided four for one, making original cost of present
common shares \$8.21 per share.

CAPITAL GAIN TOTALS

	Loss	Gain
Held under one year	\$13,857.02	
Held over one year, less than 2 years..	3,166.18	
Held over 2 years, less than 5 years.....		\$ 2,963.96
Held over 5 years, less than 10 years....	2,984.37	
Held over 10 years		56,707.40
	<hr/>	<hr/>
	\$20,007.57	\$59,671.36
Loss		20,007.57
	<hr/>	<hr/>
Net gain		\$39,663.79

(Testimony of George S. Gaylord.)

Respondent's Exhibit B—(Continued.)

1937

United States

1937

SCHEDULE OF FARM INCOME AND EXPENSES

Treasury Department Form 1040F Internal Revenue Service

Attach This Form
to Your Income
Tax Return Form
1040 and File It
With the Collector
of Internal Revenue
for Your District

For Calendar Year 1937
Or for year beginning.....,
1937, and ended....., 1938

Name
GEORGE S. GAYLORD

Address
639 Rosemont Ave.,
Pasadena, Calif.

Fill in Pages 1 and
3 if Your Accounts
Are Kept on a Cash
Basis. If You Keep
Books on an Ac-
crual Basis and
Desire to Use This
Form, Fill in Pages
2 and 3 Instead

FARM INCOME FOR TAXABLE PERIOD

1. Sale of Livestock and Produce Raised			2. Sale of Crops and Other Produce Raised		
Kind of animals	Quantity	Amount	Kind of crop	Quantity	Amount
Calves		\$ 55.00	Alfalfa		\$536.96
Hogs		591.90	Misel.		61.72
Geese		21.20			
Fruit		138.04	Total.....		\$598.68
Eggs		296.04	(Enter on line 2)		
Total.....\$1,102.18					
(Enter on line 1)					

(Testimony of George S. Gaylord.)

Respondent's Exhibit B—(Continued)

SUMMARY OF INCOME AND EXPENSES COMPUTED ON
A CASH RECEIPTS AND DISBURSEMENTS BASIS

1. Sale of livestock and produce raised.....	\$ 1,102.18
2. Sale of crops and other produce raised.....	598.68
3. Other receipts .....	.....
4. Sale of livestock or other items purchased.....	.....
5. Gross Profits	\$ 1,700.86
7. Expenses (column 1, page 3).....	\$ 3,433.66
8. Expenses (column 2, page 3).....	.....
9. Repairs (from page 3).....	42.54
10. Depreciation (from page 3).....	503.96
11. Total Expenses	\$ 3,980.16
6. Net farm profit (line 5 minus line 11) to be re- ported in item 9 on Form 1040.....	\$ 2,279.30
[Stamped]: Received with remittance Mar. 3, 1938.	

FARM INVENTORY FOR INCOME COMPUTED
ON AN ACCRUAL BASIS

[Followed by printed form not filled in]

SUMMARY OF INCOME AND EXPENSES COMPUTED
ON AN ACCRUAL BASIS

[Followed by printed form not filled in]

FARM EXPENSES FOR TAXABLE YEAR

Items	(1) Amount
Hired help for farm	\$ 1,272.48
Feed, hay, straw, etc.	1,382.50
Seed, plants, etc.	46.63
Fertilizers and spraying materials	55.00
Fuel and oil for farm work	330.89
Barrels, bags, crates, and twine.....	11.63
Water rent, Electric Power	161.75
Manure	101.02
Insurance	71.76
Total.....	\$ 3,433.66
(Enter on line 7)	

(Testimony of George S. Gaylord.)

Respondent's Exhibit B—(Continued)

REPAIRS AND DEPRECIATION

Description (If buildings, state the material of which constructed)	Date Acquired or Con- structed	Age When Acquired	Probable Life After Acquirement	Cost or Value as of March 1, 1913, Whichever Greater (Exclusion of land) (Indicate basis)	Repairs	Depreciation Charged Off	
						Previous Years	This Year
Farm buildings, wood	1936	New	25 yrs.	\$ 2,500.00	\$ 42.54	\$ 0	\$ 100.00
Farm machinery and tools	1935		15 yrs.	2,025.13		0	141.75
Farm fences, drains, ditches, etc.							
Truck	Oct. 1937	New	5 yrs.	1,049.26		0	2 mo. 34.96
Tractor	1936	10 yrs.	4 yrs.	909.00			227.25
Totals.....				\$	\$42.54	\$	\$ 503.96
					(Enter on line 9)		
							(Enter on line 10)

[Endorsed]: T.C.U.S. Filed Apr. 2, 1943.

(Testimony of George S. Gaylord.)

Mr. Coon: George S. Gaylord's return for 1938.

The Judge: Exhibit C.

(The said 1938 return of George S. Gaylord so offered and received in evidence, was marked Respondent's Exhibit C, and made a part of this record.)

Treasury Department

FORM 1040

Internal Revenue Service

Page 1

UNITED STATES

1938 INDIVIDUAL INCOME TAX RETURN 1938

(Auditor's Stamp)

FOR NET INCOMES OF MORE THAN \$5,000 FROM SALARIES, WAGES, DIVIDENDS, INTEREST, ANNUITIES, AND FOR INCOMES FROM OTHER SOURCES REGARDLESS OF AMOUNTS

For Calendar Year 1938

or fiscal year beginning 1938, and ended 1939

(Before Preparing This Return, Read the Instructions Carefully)

To be filed with the Collector of Internal Revenue for your district not later than the 15th day of the first month following the close of your taxable year

PRINT NAME AND ADDRESS PLAINLY (See Instructions 12)

639 Rosemont Avenue

Los Angeles California

Do not use this space

1874

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FEB 24 1939

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INCOME			
1. Salaries and other compensation for personal services. (See Instructions 1)			
2. Dividends			
3. Interest on bank deposits, notes, mortgages, etc.			
4. Interest on corporation bonds			
5. Taxable interest on Government obligations, etc. (See Instructions 1)			
6. Income (or loss) from partnerships, syndicates, pools, etc. (other than capital gains or losses). (See Instructions 1)			
7. Income from subsidiaries. (See Instructions 1)			
8. Rents and royalties. (See Instructions 1)			
9. Income (or loss) from business or profession. (See Instructions 1)			
10. (a) Net short-term gain from sale or exchange of capital assets. (See Instructions 1)			
(b) Net long-term gain (or loss) from sale or exchange of capital assets. (See Instructions 1)			
(c) Net gain (or loss) from sale or exchange of property other than capital assets. (See Instructions 1)			
11. Other income (including income from annuities). (See Instructions 1)			
12. Total income in items 1 to 11. (Enter amount in item 12)			156,118 50
DEDUCTIONS			
13. Contributions paid. (See Instructions 1)			
14. Interest. (See Instructions 1)			
15. Taxes. (See Instructions 1)			
16. Losses from fire, storm, shipwreck, or other casualty, or theft. (See Instructions 1)			
17. Bad debts. (See Instructions 1)			
18. Other deductions authorized by law. (See Instructions 1)			
19. Total deductions in items 13 to 18			23,482 10
20. Net income (item 12 minus item 19)			132,636 40

COMPUTATION OF TAX			
21. Net income (item 20 above)			132,636 40
22. Less: Personal exemption. (See Instructions 1)	2,500 00		
23. Credit for dependents. (See Instructions 1)	2,500 00		
24. Balance (net income)			127,636 40
25. Less: Income on Government obligations, etc. (See Instructions 1)			
26. Earned income credit. (See Instructions 1)	300 00		
27. Balance subject to normal tax			127,336 40
28. Normal tax (4% of item 27)			5,093 46
29. Surplus on item 24. (See Instructions 1)			5,152 14
30. Total (item 28 plus item 29)			10,245 60
31. Total tax (item 30, or if you had a net long-term capital gain or loss, enter item 30, Schedule F)			10,245 60
32. Less: Income tax paid at source. (See Instructions 1)			
33. Balance of tax (item 31 minus item 32)			10,245 60

NOTE.—One form marked "DUPLICATE COPY" must be filed with this original return (it will be returned if duplicate copy is not filed).

(Testimony of George S. Gaylord.)

Respondent's Exhibit C—(Continued)

SCHEDULE A.—INCOME RECEIVED FROM OTHERS
CONSISTING OF SALARIES, WAGES, FEES, AND
OTHER COMPENSATION FOR PERSONAL SERVICES
(See Instruction 1)

[Followed by printed form not filled in]

SCHEDULE B.—INTEREST ON GOVERNMENT OBLIGA-
TIONS, ETC. (See Instruction 5)

[Followed by printed form not filled in]

SCHEDULE C.—INCOME FROM RENTS AND
ROYALTIES. (See Instruction 8)

See attached schedule.

SCHEDULE D.—PROFIT (OR LOSS) FROM BUSINESS
OR PROFESSION. (See Instruction 9)

[Followed by printed form not filled in]

SCHEDULE E.—EXPLANATION OF DEDUCTION FOR
DEPRECIATION CLAIMED IN SCHEDULES
C, D, F, AND G

[Followed by printed form not filled in]

Schedule F.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF CAPITAL ASSETS. (See Instruction 10)

Page 3

1. Kind of property (If sold or exchanged, give name of property and date of sale or exchange)	2. Date acquired	3. Date sold	4. Gross sales price (or other value)	5. Cost or other basis	6. Expenses of sale (If sold or exchanged, give name of property and date of sale or exchange)	7. Depreciation or depletion (If sold or exchanged, give name of property and date of sale or exchange)	8. Gain or loss (Enter as "Gain" or "Loss")	9. Tax on gain or loss (Enter as "Tax" or "Refund")
SHORT-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD NOT MORE THAN 12 MONTHS								
Item 4			8,412 15	5,510 00			2,902 15	
			13,515 00	11,552 50			1,962 50	
Total net short-term capital gain or loss (Enter on line 1, column 2, of summary below)								1,062 50

LONG-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD FOR MORE THAN 12 MONTHS BUT NOT FOR MORE THAN 36 MONTHS

Item 4			15,102 52	25,371 10			12,271 88	8,181 25
Total net long-term capital gain or loss (Enter on line 2, column 2, of summary below)								8,181 25

LONG-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD FOR MORE THAN 36 MONTHS

Item 4			11,943 00	12,571 50			711 30	355 65
			15,012 37	27,093 00			10,774 37	53,074 65
			11,050 11	20,100 00			16,339 53	8,179 77
Total net long-term capital gain or loss (Enter on line 3, column 2, of summary below)								16,751 47

SUMMARY OF CAPITAL NET GAINS OR LOSSES

1. Character	2. Net gain or loss to be shown (Enter net gain or loss from column 2 of summary below)	3. Net gain or loss to be shown (Enter net gain or loss from column 2 of summary below)	4. Total net gain or loss to be shown (Enter net gain or loss from column 2 of summary below)
	Gain	Loss	Gain
1. Total net short-term capital gain or loss (Enter on line 1 (a) page 1, column 2, of summary below)	1,062 50		1,062 50
2. Total net long-term capital gain or loss (Enter on line 2 (a) page 1, column 2, of summary below)	16,751 47		16,751 47

State the family, fiduciary, or business relationship to you, if any, of purchaser of any of the above items: None
 If any of the above items were acquired by you other than by purchase, explain fully how acquired: See note below

COMPUTATION OF ALTERNATIVE TAX

(To be used only in the case of a net long-term capital gain or loss)

1. Net income (Line 11, page 1)	12,636 10	10. Normal tax (14% of line 9)	1,769 05
2. Net long-term capital gain (Line 10 (a), page 1)	16,751 47	11. Surcharge (Line 10 (b) (See Instruction 10))	
3. Ordinary net income (Line 1, column 2, of summary below) (a) or line 1 plus line 2 (b)	15,901 62	12. Federal tax (Line 10 plus line 11)	1,769 05
4. Less: Personal exemption (From Schedule E-1)	2,500 00	13. (a) 30% of net long-term capital gain (30% of line 2 (a))	11,019 41
5. Credit for dependent (From Schedule E-1)	2,500 00	(b) 30% of net long-term capital loss (30% of line 2 (b))	
6. Excess (from line 3) less (from line 4) less (from line 5) less (from line 6)	13,401 62	14. Alternative tax (Line 12 plus line 13 (a) or line 12 minus line 13 (b))	11,143 62
7. Total normal tax and surcharge (Line 10, page 1)		15. Total normal tax and surcharge (Line 10, page 1)	1,769 05
8. Tax liability (If a net long-term capital gain, on line 2 (a) enter line 14 or line 15, whichever is the lesser; if a net long-term capital loss, on line 2 (b) enter line 14 or line 15, whichever is the greater) (Enter on line 11, page 1)		16. Tax liability (If a net long-term capital gain, on line 2 (a) enter line 14 or line 15, whichever is the lesser; if a net long-term capital loss, on line 2 (b) enter line 14 or line 15, whichever is the greater) (Enter on line 11, page 1)	1,769 05

Schedule G.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF PROPERTY OTHER THAN CAPITAL ASSETS (See Instruction 10)

1. Kind of property	2. Date acquired	3. Date sold	4. Gross sales price (or other value)	5. Cost or other basis	6. Expenses of sale (If sold or exchanged, give name of property and date of sale or exchange)	7. Depreciation or depletion (If sold or exchanged, give name of property and date of sale or exchange)	8. Gain or loss (Enter as "Gain" or "Loss")
Total net gain (or loss) (Enter on line 10 (a) page 1)							

State the family, fiduciary, or business relationship to you, if any, of purchaser of any of the above items: None

If any of the above items were acquired by you other than by purchase, explain fully how acquired:

Item g acquired in reorganization - basis March 1, 1915 value.

C-3

(Testimony of George S. Gaylord.)

Respondent's Exhibit C—(Continued)

**SCHEDULE H.—EXPLANATION OF DEDUCTIONS
CLAIMED IN ITEMS 13, 14, 15, 16, 17, AND 18**

Item 13—Contributions:

Community Chest	\$ 110.00
Cal. Med. Civ. League	72.50
Better Am. Fed.	50.00
Times Flood Relief	25.00
	<hr/>
	\$ 257.50

Item 14—Interest:

Estate J. N. Janes	\$ 616.25
--------------------------	-----------

Item 15—Taxes:

Real estate, etc.	\$4,523.43
Lighting assess.	26.60
Tax, oil royalty	12.20
Club dues tax	23.50
State income tax	2,769.58
	<hr/>
	\$7,355.31

**SCHEDULE I.—NONTAXABLE INCOME OTHER THAN
INTEREST REPORTED IN SCHEDULE B.**

(See Instruction 12)

[Followed by printed form not filled in]

**SCHEDULE J.—EXPLANATION OF CREDITS CLAIMED
IN ITEMS 22 AND 23. (See Instructions 22 and 23)**

(1) Personal Exemption

Statue	Number of months during the year in each statue	Credit claimed
Single, or married and not living with husband or wife		
Married and living with husband or wife	12	\$2,500.00
Head of family (explain below)		

(2) Credit for Dependents

[Followed by printed form not filled in]

(Testimony of George S. Gaylord.)

Respondent's Exhibit C—(Continued)

**SCHEDULE K.—COMPUTATION OF EARNED INCOME
CREDIT. (See Instruction 26)**

[Followed by printed form not filled in]

QUESTIONS

1. State your principal occupation or profession: Investments.
2. Check whether you are a citizen (checked) or a resident alien.
3. If you filed a return for the preceding year, to which Collector's office was it sent?: Los Angeles.
4. Are items of income or deductions of both husband and wife included in this return? (See Instruction A): No.
5. State name of husband or wife if a separate return was made; personal exemption, if any, claimed thereon; and the Collector's office to which it was sent: Gertrude H. Gaylord, Los Angeles—no personal exemp. cl.
6. Check whether this return was prepared on the cash (checked) or accrual basis.
7. Did you at any time during your taxable year own directly or indirectly any stock of a foreign corporation or a personal holding company as defined by section 402? (Answer "yes" or "no"): No. (If answer is "yes," attach schedule required by Instruction M.)

AFFIDAVIT. (See Instruction F)

I/we swear (or affirm) that this return (including any accompanying schedules and statements) has been examined by me/us, and to the best of my/our knowledge and belief is a true, correct, and complete return, made in good faith, for the taxable year stated, pursuant to the Revenue Act of 1938 and the regulations issued under authority thereof.

GEORGE S. GAYLORD,

(Signature) (See Instruction F)

(If this is a joint return (not made by agent), it must be signed by both husband and wife. It must be sworn to before a proper officer by the spouse preparing the return. If neither or both prepare the return, it must be sworn to by both spouses.)

(Testimony of George S. Gaylord.)

Respondent's Exhibit C—(Continued)

Subscribed and sworn to by George S. Gaylord before me this
23rd day of February, 1939.

ALICE F. JACKSON,

Notary Public.

(Signature and title of officer administering oath)

My Commission expires Sept. 19, 1939.

A return made by an agent must be accompanied by power
of attorney. (See Instruction F.)

AFFIDAVIT. (See Instruction F)

(If this return was prepared for you by some other person, the
following affidavit must be executed)

I/we swear (or affirm) that I/we prepared this return for the
person or persons named herein and that the return (including
any accompanying schedules and statements) is a true, correct,
and complete statement of all the information respecting the in-
come tax liability of the person or persons for whom this return
has been prepared of which I/we have any knowledge.

JAMES W. BONTEMS,

(Signature of person preparing the return)

JAMES W. BONTEMS & CO.

(Name of firm or employer, if any)

215 W. 6th St., Los Angeles.

Subscribed and sworn to before me this 18th day of Feb.,
1939.

(Seal)

DOROTHY SPECKELS

Notary Public.

In and for the County of Los Angeles, State of California.

(Signature and title of officer administering oath)

My commission expires Jan. 12, 1943.

(Testimony of George S. Gaylord.)

Respondent's Exhibit C—(Continued)

GERTRUDE H. GAYLORD

Schedule C—Income from Rents and Royalties

Property	Rent Received	Depreciation	Repairs	Other Expense	Net Profit
1/2 1. Harlingen—business	\$ 1,764.12	\$ 600.00			\$ 1,164.12
1/3 2. Amarillo—business	965.01	200.00			765.01
1/3 3. Santa Monica—business	1,856.66				1,856.66
1/4 4. Alhambra—business	697.41	77.75			619.66
100 5. LaJolla—house	37.42	200.00			162.58
100 6. Neenah—house	712.50	450.00			262.50
	<u>6,033.12</u>	<u>1,527.75</u>			<u>4,505.37</u>

Schedule E—Depreciation claimed in Schedule C

Property	Date Acquired	Est. Rem. Life	Cost	Depn. Prior Yrs.	Rem. Cost	Depn. This Yr.
1. Brick and Hol. tile	1937	20 Y	12,000.00		12,000.00	600.00
2. Brick	1938	8 Y	3,200.00		3,200.00	200.00
4. Stucco	1938	20 Y	3,110.00		3,110.00	77.75
5. Frame	1937	10 Y	2,000.00		2,000.00	200.00
6. Brick, Veneer & Wood	1931	33 Y	30,000.00	5,400.00	24,600.00	450.00
			<u>50,310.00</u>	<u>5,400.00</u>	<u>44,910.00</u>	<u>1,527.75</u>

[Testimony of George S. Gaylord.]

GEORGE S. GAYLORD—1938

Schedule C—Income from Rents and Royalties

Property	Rent Received	Depreciation	Repairs	Other Expense	Net Profit
100 1. Oil Station Lease	1,129.33				1,129.33
100 2. Hollywood—Stores & Apts.	7,609.52	1,000.00		70.70	6,538.82
100 3. Mushroom sheds	3,206.87	1,230.00	168.20*		1,808.67
1/3 4. Santa Mon.—Business	1,856.66				1,856.66
1/2 5. Alhambra—Business, †1938	1,394.82	155.50*			1,239.32
1/3 6. Amarillo—Business, †1938	965.01	200.00			765.01
100 7. Sign rental	37.50				37.50
100 8. Swan Oil Royalty	73.19	20.13			53.06
100 9. Chicago Trust Prop., 1/16 Int.....	59.34			34.52	24.82
	<u>16,332.24</u>	<u>2,605.63</u>	<u>168.20</u>	<u>105.22</u>	<u>13,453.19</u>

* Pencilled notation illegible.

† Figures in pencil.

GEORGE S. GAYLORD—1938

Schedule E—Depreciation Claimed in Schedule C

Property	Date Acquired	Est. Rem. Life	Cost	Deprn. Prior Yrs.	Rem. Cost	Deprn. This Yr.
2. Brick and wood	1928	3 Y	35,000.00	31,999.99	3,000.00	1,000.00
3. Wood	1934	7 Y	10,500.00	1,890.00	8,610.00	1,230.00
5. Stucco	1938	20 Y	6,220.00		6,220.00	155.50
6. Brick	1938	8 Y	3,200.00		3,200.00	200.00
8. Oil depletion 27½ of 73.19						20.13
			<u>54,920.00</u>	<u>33,889.99</u>	<u>21,030.00</u>	<u>2,605.63</u>

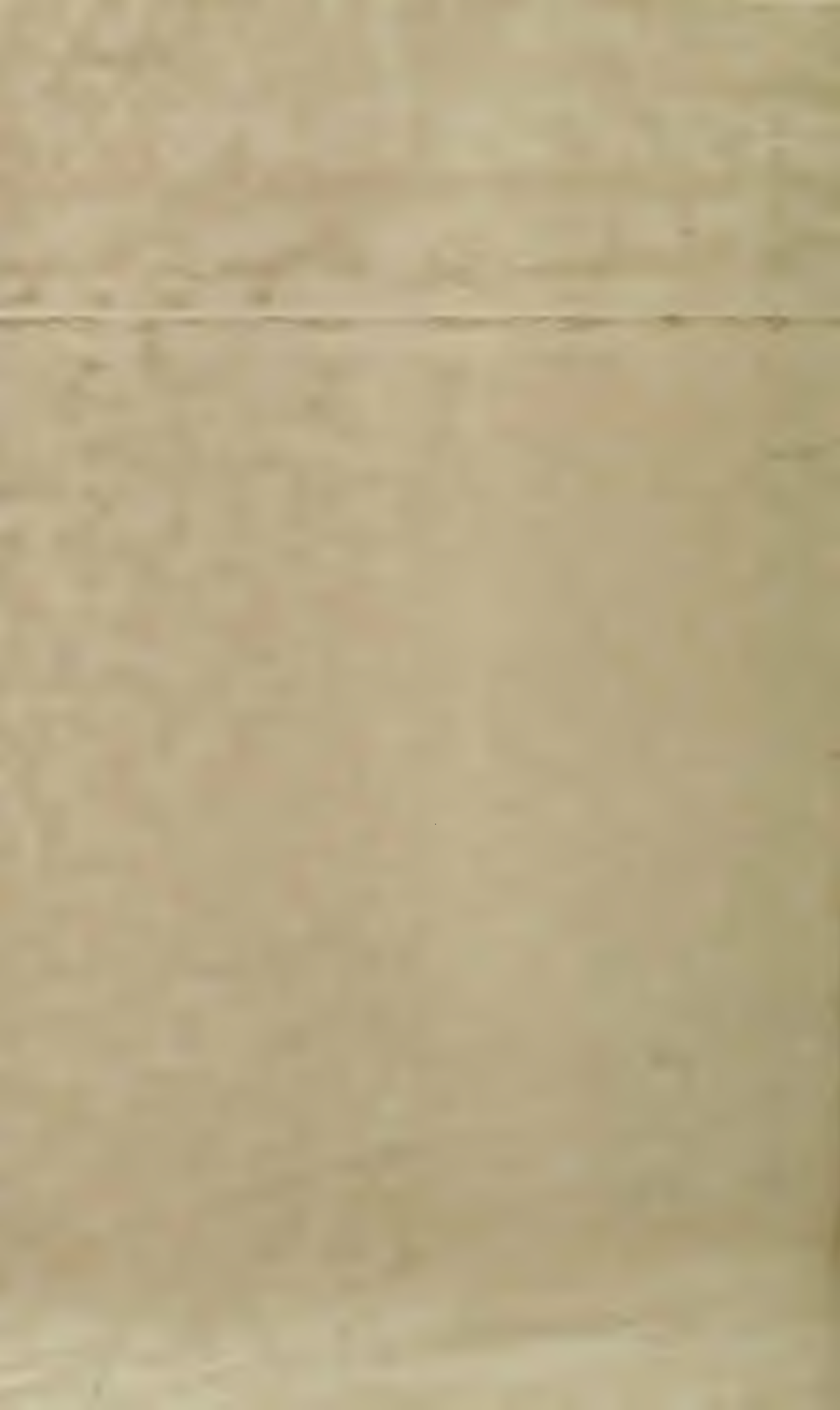
[Pencilled notation illegible]

GEORGE S. GAYLORD

Schedule F - Gains and Losses from Sales or Exchanges of
Capital Assets - 1938

No Shares	Stock	Date Acq.	Date Sold	Sales Price	Cost or basis	Profit or loss
(a) 100	Lake Shore Mine	Apr. 22-38	Oct. 24-38	5,019.00	5,100.00	81.00
100	Kirtland H.B.B.M.	Mar. 19			570.50	
100	"	"			76.50	
200	"	21	Apr. 9-38	893.16	163.00	83.16
				5,912.16	5,910.00	2.16
(b) 200	McIntyre Porc.	Sept. 17-37	Apr. 22-38	7,996.00	6,840.00	1,156.00
100	Lake Shore Mine	Nov. 10	Oct. 24	5,019.00	5,122.50	103.50
				13,015.00	11,962.50	1,052.50
(c) 100	Seaboard Oil	Jan. 5-37	Nov. 17-38	2,170.65	4,170.00	1,999.35
100	Standard Ind.	"	"	2,811.74	4,757.50	1,945.76
100	Lou. L. & Ex.	" 8	"	682.94	1,455.30	772.36
100	Creole Pet.	"	"	2,262.75	3,758.10	1,495.35
500	Borg Piston Ring	May 4	Dec. 23	1,397.26	6,000.00	4,602.74
1,000	Cook Co. Ser. B	Sept. 8-36	May 3	1,050.00	1,045.00	5.00
1,000	Illinois Rel.	"	Apr. 30	1,085.00	1,102.50	17.50
1,000	Kenosha H. Sch.	"	"	1,035.00	1,160.00	125.00
1,000	Pasadena M. Imp.	"	" 29	1,072.40	1,095.00	22.60
17	Babcock & Wilcox	"	June 8	339.65	623.00	283.35
7	Gen. Edison Co.	"	" 6	172.24	182.50	10.26
4	Dis. Match Co.	"	" 8	101.03	136.00	34.97
3	" Pfd.	"	" 7	171.57	180.63	9.06
28	Elgin Nat'l Watch	"	"	451.29	1,036.00	584.71
3	State Farmers So.	"	"	306.85	414.00	107.15
4	Kennecott Copper	"	" 6	177.63	192.00	14.37
3	Anaconda Copper	"	"	66.40	118.87	52.47
3	Ill. Bell Tel.	"	"	426.85	440.00	13.15
8	Pullman	"	" 7	181.27	463.00	281.73
				16,102.52	28,374.40	12,271.88
(d) 100	McIntyre Porc.	Mar. 17-36	Apr. 22-38	4,021.00	4,170.60	149.60
100	"	" 20	"	7,942.00	4,258.10	3,683.90
100	"	"	"		4,245.60	
				11,963.00	12,674.30	711.30

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GEORGE S. GAYLORD

No Shares	Stock	Date Acq.	Date Sold	Sales Price	Cost or Basis	Profit or Loss
(a) 100	Marathon P. Mills		June 14-38	11,879.00		
100			20	6,150.50		
100				6,189.50		
100			25	3,016.04		
100				3,041.04		
100			July 22	4,162.25		
100			Aug. 5	4,614.92		
100			16	22,743.75		
100			21	14,090.61		
100			25	4,692.01		
100			Sept. 2	23,368.75		
100				9,197.50		
100			12	4,650.50		
100			30	4,226.75		
100				8,553.50		
100			Nov. 18	4,256.75		
				135,842.37	27,093.00	107,749.37
(f) 1	Lot's Payments	Mar. 16-31	Nov. 1938	1,580.00	2,453.06	873.06
(g) 100	El Paso		Oct. 31-31		6,112.50	
100			Nov. 7		2,237.50	
100			10		2,112.50	
100			13		2,050.00	
100			17	Reduced 1 for 3	1,862.50	
100			20	March 29, 1932	1,712.50	
100					1,762.50	
100			Dec. 11		1,225.00	
100			31		1,137.50	
100			Fractions sold June 5-1933	8.50		
100			June 6-33		196.04	
100			Dec. 23-1938	1,060.51		
				4,069.01	20,408.54	16,339.53

C-5



(Testimony of George S. Gaylord.)

Respondent's Exhibit C—(Continued)

SHOWING COST OF MARATHON PAPER MILLS
COM. STOCK

Menasha Printing and Carton Co.:

Value Mar. 1, 1913	\$ 350,000.00
July 1, 1917, invested	152,500.00
	<hr/>
	\$ 502,500.00
Less preferred stock sold, July, 1917	20,000.00
	<hr/>
	\$ 482,500.00

Received for 3,357 shares Menasha Printing and Carton Co. stock, securities of Marathon Paper Mills Co., as follows:

\$1,038,000.00 par 5½% Bonds	\$1,038,000.00	54.21*
6,728 shares common stock (@ \$130.30..	876,658.40	45.79*
	<hr/>	<hr/>
	\$1,914,658.40	100%*

* Figures in pencil.

\$ 1,038,000.00 equals 54.21% of total received

\$ 876,658.40 equals 45.79% of total received

45.79% of \$482,500.00 equals \$220,936.75 or original cost of 6,782 shares of common stock or \$32.84 per share.

Stock was divided four for one, making original cost of present common shares \$8.21 per share.

GEORGE S. GAYLORD

Item 18—Other Deductions 1938

Deductions claimed are as follows:

Taxpayer purchased a one-third interest in business block at Santa Monica, California. After renting property for approximately six months, additional space was required by some of the tenants. After consultation with contractors, it was determined that the building should be razed and a new building erected. The proportionate cost of the interest in the old building as determined from the tax bill valuations of real estate and improvements at the date nearest the date of purchase was \$5,076.11

(Testimony of George S. Gaylord.)

Respondent's Exhibit C—(Continued)

Cost of insurance, etc., on gold bullion in foreign countries	125.00
Miscellaneous fees and expenses	52.23
	<hr/>
	\$5,253.34

[Penciled notation] : Latisteel Bldg., completed Apr. 1, 1939.

Treasury Department Form 1040F Internal Revenue Service
1938 United States 1938

SCHEDULE OF FARM INCOME AND EXPENSES

Attach This Form
to Your Income
Tax Return Form
1040 and File It
With the Collector
of Internal
Revenue
for Your District

For Calendar Year 1938
Or for year beginning.....
1938, and ended....., 1939

Name
GEORGE S. GAYLORD
Address

639 Rosement Avenue,
Pasadena, Calif.

Fill in Pages 1 and
3 If Your Accounts
Are Kept on a Cash
Basis. If You Keep
Books on an Ac-
crual Basis and De-
sire to Use This
Form, Fill in Pages
2 and 3 Instead

FARM INCOME FOR TAXABLE PERIOD

1. Sale of Livestock and Produce Raised	2. Sale of Crops and Other Produce Raised
Hogs\$ 379.07	Alfalfa\$ 443.25
Chickens 238.89	
Fruit 368.58	Total.....\$ 443.25
Eggs 505.57	(Enter on line 2)
Misel. 58.41	
Total.....\$1,550.52	
(Enter on line 1)	

SUMMARY OF INCOME AND EXPENSES COMPUTED
ON A CASH RECEIPTS AND DISBURSEMENTS BASIS

1. Sale of livestock and produce raised.....	\$ 1,550.52
2. Sale of crops and other produce raised.....	443.25
3. Other receipts	
4. Sale of livestock or other items purchased.....	
5. Gross Profits	\$ 1,993.77

(Testimony of George S. Gaylord.)

Respondent's Exhibit C—(Continued)

7. Expenses (column 1, page 3).....	\$ 3,358.75
8. Expenses (column 2, page 3).....	1,361.64
9. Repairs (from page 3)	23.91
10. Depreciation (from page 3).....	672.10
11. Total Expenses	\$ 5,416.40
6. Net farm profit (line 5 minus line 11) to be re- ported in item 9 on Form 1040.....	\$ 3,422.63

FARM INVENTORY FOR INCOME COMPUTED ON
AN ACCRUAL BASIS

[Followed by printed form not filled in]

SUMMARY OF INCOME AND EXPENSES COMPUTED
ON AN ACCRUAL BASIS

[Followed by printed form not filled in]

FARM EXPENSES FOR TAXABLE YEAR

Items	(1) Amount
Hired help for farm	\$1,164.83
Feed, hay, straw, etc.	1,443.49
Seed, plants, etc.	14.89
Fuel and oil for farm work	405.61
Barrels, bags, crates, and twine, cartons	40.07
Utilities	157.60
Power	132.26

Total\$3,358.75

(Enter on line 7)

Items	(2) Amount
Flood Expense—	
Labor clearing land	\$ 352.21
Repair pens	198.75
Repair foundations	257.00
Floor cement ch. hse.	103.68
Repairs to dyke	450.00

Total\$1,361.64

(Enter on line 8)

(Testimony of George S. Gaylord.)

Respondent's Exhibit C—(Continued)

REPAIRS AND DEPRECIATION

Description (If buildings, state the material of which constructed)	Date Acquired or Constructed	Age When Acquired	Probable Life After Acquirement	Cost or Value as of March 1, 1913, Whichever Greater (Exclusive of land) (Indicate basis)	Depreciation Charged Off	
					Repairs	Previous Years This Year
Farm buildings, wood.....	1936	New	25 Y	\$ 2,500.00	\$	\$100.00 \$100.00
Farm machinery and tools	1935		15 Y	2,025.13	23.91	141.75 135.00
Farm fences, drains, ditches, etc.						
Truck Oct. 1937	1937	New	5 Y	1,049.26		34.96 209.85
Tractor 1936	1936	10 Y	4 Y	909.00		227.25 227.25
Totals.....				\$.....	\$ 23.91 (Enter on line 9)	\$ \$672.10 (Enter on line 10)

[Endorsed]: T.C.U.S. Filed Apr. 2, 1943.

(Testimony of George S. Gaylord.)

Mr. Coon: And his return for 1939.

The Judge: That will be Exhibit D.

(The said 1939 return of George S. Gaylord, so offered and received in evidence, was marked Respondent's Exhibit D, and made a part of this record.) [349]

FORM 1040
Treasury Department
Internal Revenue Service

UNITED STATES

Page 1

INDIVIDUAL INCOME TAX RETURN 1939

FOR NET INCOMES OF MORE THAN \$5,000 FROM SALARIES, WAGES,
DIVIDENDS, INTEREST, ANNUITIES, AND FOR INCOMES FROM
OTHER SOURCES REGARDLESS OF AMOUNTS

For Calendar Year 1939

(Auditor's Stamp)

(Do not use these spaces)

1014

4-25-40

Tax year beginning 1939, and ended 1940

To be filed with the Collector of Internal Revenue for your district not later than the 15th day of the third month following the close of your taxable year

PRINT NAME AND ADDRESS PLAINLY. (Show Instructions C)

ROBERT H. LAYTON

(Print) (Do not write in these spaces)

439 Rosemont Avenue

(Street and number, or rural route)

Inglewood Los Angeles California

(Post office)

(County)

(State)

MAR 15 1940

Cash Check M.O.

First Payment

INCOME

1. Salaries and other compensation for personal services. (From Schedule A)	\$ 3,537.00	
2. Dividends	1,000.00	
3. Interest on bank deposits, notes, mortgages, etc.	1,000.00	
4. Interest on corporation bonds		
5. Taxable interest on Government obligations, etc. (From Schedule B)		
6. Income (or loss) from partnerships, syndicates, pools, etc. (other than capital gains or losses). (Attach names and addresses)		
7. Income from subsidiaries. (Attach names and addresses)		
8. Rents and royalties. (From Schedule C)	10,000.00	
9. Income (or loss) from business or profession. (From Schedule D) 10,000	7,366.00	
10. (a) Net short-term gain from sale or exchange of capital assets. (From Schedule F)		
(b) Net long-term gain (or loss) from sale or exchange of capital assets. (From Schedule F)	29,000.00	
(c) Net gain (or loss) from sale or exchange of property other than capital assets. (From Schedule G)		
11. Other income (including income from annuities) (Show names) 10,000	1,000.00	
12. Total income in items 1 to 11. (Enter net income in Schedule 1)		17,366.00

DEDUCTIONS

13. Contributions paid. (Caption in Schedule H)	\$ 300.00	
14. Interest. (Caption in Schedule H)	450.00	
15. Taxes. (Caption in Schedule H)	2,300.00	
16. Losses from fire, storm, shipwreck, or other casualty, or theft. (Caption in Schedule H)		
17. Bad debts. (Caption in Schedule H)		
18. Other deductions authorized by law. (Caption in Schedule H)	3,000.00	
19. Total deductions in items 13 to 18		6,050.00
20. Net income (item 12 minus item 19)		11,316.00

COMPUTATION OF TAX

21. Net income (item 20 above)	\$ 11,316.00	57	28. Normal tax (4% of item 27)	\$ 2,539.36	57
22. Less: Personal exemption. (From Schedule J-1)	\$ 2,500.00		29. Surplus on item 24. (See Instructions 29)	700.00	58
23. Credit for dependents. (From Schedule J-2)	2,500.00		30. Total (item 28 plus item 29)	\$ 6,327.02	59
24. Balance (surplus net income)	\$ 38,636.00	57	31. Total tax (item 30, or if you had a net long-term capital gain or loss, enter line 16, Schedule F)	\$ 6,327.02	60
25. Less: Income on Government obligations, etc. (See Instructions 25)			32. Less: Income tax paid at source		
26. Earned income credit. (From Schedule K-1 or B-2)	300.00	300.00	33. Income tax paid to a foreign country (See Instructions 33)		
27. Balance subject to normal tax	\$ 38,336.00	57	34. Balance of tax (line 31 minus items 32 and 33)	\$ 6,327.02	61

NOTE.—One form marked "DUPLICATE COPY" must be filed with this original return (It will be accepted if duplicate copies are not filed)

5-1



(Testimony of George S. Gaylord.)

Respondent's Exhibit D—(Continued)

Schedule A.—INCOME RECEIVED FROM OTHERS CONSISTING OF SALARIES, WAGES, FEES, AND OTHER COMPENSATION FOR PERSONAL SERVICES. (See Instruction 1)

[Followed by printed form not filled in]

Schedule B.—INTEREST ON GOVERNMENT OBLIGATIONS, ETC. (See Instruction G)

[Followed by printed form not filled in]

Schedule C.—INCOME FROM RENTS AND ROYALTIES. (See Instruction 8)

1. Kind of property	2. Amount	3. Depreciation (explain in Schedule E)	6. Net profit (column 2 minus sum of columns 3, 4, and 5) (enter as item 8, page 1)
Oil royalties	\$ 268.83	\$ 73.93	\$ 194.90
Rents as per schedule attached			10,788.55
			\$10,983.45
Explanation of deductions claimed in columns 4 and 5: Depreciation (27½%).			

Schedule D.—PROFIT (OR LOSS) FROM BUSINESS OR PROFESSION. (See Instruction 9)

[Followed by printed form not filled in]

Schedule E.—EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES C, D, F, and G.

See schedule attached

(Testimony of George S. Gaylord.)

Respondent's Exhibit D—(Continued)

Schedule F.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF CAPITAL ASSETS. (See Instruction 10)

	8. Gain or loss (column 4 plus column 7 minus the sum of columns 5 and 6)	Gain or loss to be taken into account 10. Amount
Short-Term Capital Gains and Losses		
—Assets Held Not More Than 18 Months		
See schedule attached	\$ 8,645.68	\$ 8,645.68
Long-Term Capital Gains and Losses—		
Assets Held for More Than 24 Months		
See schedule attached	\$59,389.11	\$29,694.55

SUMMARY OF CAPITAL NET GAINS OR LOSSES

1. Classification	3. Net gain or loss to be taken into account from col. 10, above		5. Total net gain or loss to be taken into account in columns 2, 3, and 4 of this summary	
	Gain	Loss	Gain	Loss*
1. Total net short-term capital gain or loss (enter as item 10 (a), page 1, amount of gain shown in col. 5) ..	\$ 8,645.68	\$	\$ 8,645.68	\$
2. Total net long-term capital gain or loss (enter as item 10(b), page 1, amount of gain or loss shown in column 5)	\$29,694.55	\$	\$29,694.55	\$

* No net loss allowable (see Instruction 10)

State the family, fiduciary, or business relationship to you, if any, of purchaser of any of the above items: None.

If any of the above items were acquired by you other than by purchase, explain fully how acquired: See schedule attached.

(Testimony of George S. Gaylord.)

Respondent's Exhibit D—(Continued)

COMPUTATION OF ALTERNATIVE TAX

(To be used only in the case of a net long-term capital gain or loss)

1. Net income (item 20, page 1). (See Instruction 10)		\$41,139.37
2. (a) Net long-term capital gain (item 10(b) page 1)		29,694.55
(b) Net long-term capital loss (item 10(b), page 1)		
3. Ordinary net income (line 1 minus line 2(a) or line 1 plus line 2(b)). (See Instruction 10)		11,444.82
4. Less: Personal exemption. (From Schedule J-1)	\$2,500.00	
5. Credit for dependents. (From Schedule J-2)		2,500.00
6. Balance (surtax net income)		\$ 8,944.82
7. Less: Interest on Government obligations, etc. (See Instruction 25)		
8. Earned income credit. (From Schedule K-1 or K-2). (See Instruction 10)	300.00	300.00
9. Balance subject to normal tax		\$ 8,644.82
10. Normal tax (4% of line 9)		\$ 345.79
11. Surtax on line 6. (See Instruction 29)		401.14
12. Partial tax (line 10 plus line 11)		\$ 746.93
13. (a) 30% of net long-term capital gain (30% of line 2(a))		8,908.37
(b) 30% of net long-term capital loss (30% of line 2(b))		
14. Alternative tax (line 12 plus line 13(a) or line 12 minus line 13(b))		\$ 9,655.30
15. Total normal tax and surtax (item 30, page 1)		\$ 6,327.02
16. Tax liability (if a net long-term capital gain, on line 2(a), enter line 14 or line 15, whichever is the lesser; if a net long-term capital loss, on line 2(b), enter line 14 or line 15, whichever is the greater). (Enter as item 31, page 1)		\$ 6,327.02

(Testimony of George S. Gaylord.)

Respondent's Exhibit D—(Continued)

Schedule G.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF PROPERTY OTHER THAN CAPITAL ASSETS. (See Instruction 10)

[Followed by printed form not filled in]

Schedule H.—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 13, 14, 15, 16, 17, and 18

See Schedule Attached

Schedule I.—NONTAXABLE INCOME OTHER THAN INTEREST REPORTED IN SCHEDULE B.

(See Instruction G)

[Followed by printed form not filled in]

Schedule J.—EXPLANATION OF CREDITS CLAIMED IN ITEMS 22 AND 23. (See Instructions 22 and 23)

(1) Personal Exemption		
Status	Number of mos. during the year in each status	Credit Claimed
Married and living with husband or wife	12	\$2,500.00

Schedule K.—COMPUTATION OF EARNED INCOME CREDIT. (See Instruction 26)

(2) If your net income is more than \$3,000, use only this part of schedule.	
Earned net income (not more than \$14,000).....	\$
Net income (item 20, page 1).....	41,139.37
Earned income credit (10% of earned net income or 10% of net income, above, whichever amount is smaller, but do not enter less than \$300).....	300.00

(Testimony of George S. Gaylord.)

Respondent's Exhibit D—(Continued)

QUESTIONS

1. State your principal occupation or profession: Investments.
2. Check whether you are a citizen ☒ or a resident alien ☐.
3. If you filed a return for the preceding year, to which Collector's office was it sent? Los Angeles.
4. Are items of income or deductions of both husband and wife included in this return? No.
5. State (a) Name of husband or wife if separate return was made: Gertrude H. Gaylord.
(b) Personal exemption, if any, claimed thereon: None.
(c) Collector's office to which it was sent: Los Angeles.
6. Check whether this return was prepared on the cash ☒ or accrual ☐ basis.
7. Did you at any time during your taxable year own directly or indirectly any stock of a foreign corporation or a personal holding company as defined by section 501? (Answer "Yes" or "No"): No. (If answer is "yes," attach statement required by Instruction J.)

AFFIDAVIT. (See Instruction E)

I/we swear (or affirm) that this return (including any accompanying schedules and statements) has been examined by me/us, and to the best of my/our knowledge and belief is a true, correct, and complete return, made in good faith, for the taxable year stated, pursuant to the Internal Revenue Code, as amended, and the regulations issued under authority thereof.

GEORGE S. GAYLORD

(Signature) (See Instruction E)

(If this is a joint return (not made by agent), it must be signed by both husband and wife. It must be sworn to before a proper officer by the spouse preparing the return. If neither or both prepare the return, it must be sworn to by both spouses.)

Subscribed and sworn to by George S. Gaylord before me this 27th day of Feb., 1940.

(Seal)

DOROTHY SPECKELS

Notary Public in and for the County of Los Angeles, State of California.

(Signature and title of officer administering oath)

My commission expires Jan. 12, 1943.

A return made by an agent must be accompanied by power of attorney. (See Instruction E.)

(Testimony of George S. Gaylord.)

Respondent's Exhibit D—(Continued)

AFFIDAVIT. (See Instruction E)

(If this return was prepared for you by some other person, the following affidavit must be executed)

I/we swear (or affirm) that I/we prepared this return for the person or persons named herein and that the return (including any accompanying schedules and statements) is a true, correct, and complete statement of all the information respecting the income tax liability of the person or persons for whom this return has been prepared of which I/we have any knowledge.

JAMES M. BONTEMS

(Signature of person preparing the
return)

JAMES W. BONTEMS & CO.

215 W. 6th St., Los Angeles

(Name of firm, or employer, if any)

Subscribed and sworn to before me this 26 day of Feb., 1940.

(Seal)

DOROTHY SPECKELS

Notary Public, in and for the County of Los Angeles, State of
California.

(Signature and title of officer administering oath)

My Commission Expires Jan. 12, 1943.

(Testimony of George S

Location	Kind	ation	Total Expenses	Net Income
Alhambra	Stores	1.00	\$2,484.72	\$2,886.82
Amarillo	"	0.00	619.01	1,149.32
Glendale	Land	.....	588.68	791.32
Hollywood	Stores	0.00	3,118.04	1,636.42
Oxnard	Mushroom	0.00	1,372.75	2,621.51
Santa Monica	Stores	2.93	1,501.29	1,703.16
		3.93	\$9,684.49	\$10,788.55

(a) Weed expense, etc

(b) Architect's fee

(c) Repairs

Location	Kind	ated Life at Beginning of Year	Depreciation This Year
Alhambra	Stucco an	20 years	\$ 771.00
Amarillo	Brick (19	7½ years	400.00
Hollywood	Brick and	2 years	1,000.00
Oxnard	Wood she	6 years	1,230.00
Santa Monica	Stucco an	20 years	562.93
			<u>\$3,963.93</u>

(Testimony of George S. Gaylord.)

Respondent's Exhibit D—(Continued)

AFFIDAVIT. (See Instruction E)

(If this return was prepared for you by some other person, the following affidavit must be executed)

I/we swear (or affirm) that I/we prepared this return for the person or persons named herein and that the return (including any accompanying schedules and statements) is a true, correct, and complete statement of all the information respecting the income tax liability of the person or persons for whom this return has been prepared of which I/we have any knowledge.

JAMES M. BONTEMS

(Signature of person preparing the return)

JAMES W. BONTEMS & CO.

215 W. 6th St., Los Angeles

(Name of firm, or employer, if any)

Subscribed and sworn to before me this 26 day of Feb., 1940.

(Seal)

DOROTHY SPECKELS

Notary Public, in and for the County of Los Angeles, State of California.

(Signature and title of officer administering oath)

My Commission Expires Jan. 12, 1943.

GEORGE S. GAYLORD

Location	Kind	Rents Received	Taxes	Insurance	Commissions	Other Expenses	Depreciation	Total Expenses	Net Income
Alhambra	Stores	\$ 5,371.54	\$ 890.96	\$ 88.00	\$ 652.50	(a) \$ 82.26	\$ 771.00	\$2,484.72	\$2,886.82
Amarillo	"	1,768.33	212.34	(b) 6.67	400.00	619.01	1,149.32
Glendale	Land	1,380.00	318.68	270.00	588.68	791.32
Hollywood	Stores	4,754.46	2,109.94	8.10	1,000.00	3,118.04	1,636.42
Oxnard	Mushroom sheds	3,994.26	124.71	(c) 18.04	1,230.00	1,372.75	2,621.51
Santa Monica	Stores	3,204.45	868.53	69.83	562.93	1,501.29	1,703.16
		<u>\$20,473.04</u>	<u>\$4,525.16</u>	<u>\$ 165.93</u>	<u>\$ 922.50</u>	<u>\$ 106.97</u>	<u>\$3,963.93</u>	<u>\$9,684.49</u>	<u>\$10,788.55</u>

(c) Repairs

[illegible]

O. S. OAYLORD
1939 CAPITAL GAINS AND LOSSES

Date of Sale	Description of Item	Number of Shares	Amount Received	Date Acquired	Cost or Basis	Profit and Loss	Taxable Income		
							Short Term Gains	Long Term Gains	Over 24 Months
1-15-39	Marathon P	100	3,777.75	3-1-13	821.00	2,956.75			2,956.75 ✓
	United Shipyards B	2,500	2,177.95	5-31-34	5,000.00	2,126.07			2,126.07
1-18-39	First National Chicago	15	3,705.60	9-8-36	4,050.00	744.40			744.40
	Marathon P	100	3,777.75	3-1-13	821.00	2,956.75			2,956.75 ✓
	McIntyre P	100	5,373.74	8-8-38	4,772.00	599.74	599.74		
		100	5,373.21		4,772.00	612.21	612.21		
	Continental Illinois National bank	8	621.85	9-8-36	989.75	367.90			367.90
	Northern Trust Company	6	3,083.70	9-8-36	4,500.00	1,416.30			1,416.30
	Marathon P	50	1,876.35	2-1-12	410.50	1,465.85			1,465.85 ✓
		50	1,766.55	3-1-13	410.50	1,465.85			1,465.85 ✓
1-11-39	Uchi 6's	5,000	4,650.00	10-24-38	4,350.00	300.00	300.00		
	Maranda	1,000	6,067.00	4-22-38	5,725.00	2,342.00	2,342.00		
	Dome Mines	200	6,392.00	10-4-37	4,395.00	1,997.00	1,997.00		
1-27-39	411,595 os. gold		11,112.49	1-17-36	11,511.42	398.93	398.93		
	United Shipyards	50	57.45	4-9-31	305.00	247.55			247.55
	Marathon P	100	3,527.75	3-1-13	821.00	2,706.75			2,706.75 ✓
2-17-39	Phillips Pet.	100	5,931.82	11-18-38	4,022.00	90.18	90.18		
	McIntyre P. Co.	100	5,221.74	8-8-38	4,772.00	449.74	449.74		
	Dome Mines	100	5,094.93	4-22-38	2,637.50	2,457.43			2,457.43
	International Nickel	100	5,113.54	10-22-38	4,790.00	351.54	351.54		
	Marathon P	100	3,548.75	3-1-13	821.00	2,727.75			2,727.75 ✓
3-5-39	Marathon P.	100	3,543.75	3-1-13	821.00	2,722.75			2,722.75 ✓
3-10-39		62	2,231.20	3-1-13	509.02	1,722.18			1,722.18 ✓
		200	7,197.50	3-1-13	1,642.50	5,555.00			5,555.00 ✓
3-28-39	McIntyre P. Co.	100	5,471.74	10-4-37	4,772.00	699.74	699.74		
	\$4,000.00 - Third Ave. #51360		336.33	2-15-35					
	10,000.00 -		970.98						
	10,000.00 -		938.17	2-15-38					
	10,000.00 -		972.22		3,447.25	1,461.36	1,461.36		
	10,000.00 -		935.97	3-25-38					
	6,000.00 -		582.58						
4-10-39	Marathon P	200	7,322.50	3-1-13	1,642.00	5,680.50			5,680.50 ✓
		100	3,315.25	3-1-13	821.00	2,494.25			2,494.25 ✓
6-8-39		300	10,196.25	3-1-13	2,463.00	7,733.25			7,733.25 ✓
6-10-39		200	6,197.50	3-1-13	1,642.00	4,555.50			4,555.50 ✓
		100	2,398.75	3-1-13	821.00	2,177.75			2,177.75 ✓
6-19-39	1 Acre at Oxnard		185.50	12-12-34	150.00	35.50			35.50 ✓
6-26-39	Lot 12, Brandon Park		247.50	1-16-31	613.27	365.77			365.77 ✓
6-28-39	Marathon P.	200	6,474.50	3-1-13	1,642.00	5,005.50			5,005.50 ✓
7-3-39		100	3,311.25	3-1-13	821.00	2,490.25			2,490.25 ✓
7-20-39		200	6,437.50	3-1-13	1,642.00	4,855.50			4,855.50 ✓
8-6-39		200	7,197.50	3-1-13	1,642.00	5,555.50			5,555.50 ✓
11-4-39	Lot 19, Brandon Park		2,127.50	3-16-31	613.27	1,514.23			1,514.23 ✓
1939 Various	Imperial Tobacco of Canada	200	2,254.00	10-24-38	3,090.00	736.00	736.00		
	4 Brandon Park lots		1,571.33	7-16-31	2,152.06	945.76			945.76 ✓
			\$172,078.23		\$104,943.54	\$68,034.79	\$8,645.68		\$59,389.11

Wb

(Testimony of George S. Gaylord.)

Respondent's Exhibit D—(Continued)

GEORGE S. GAYLORD

Income Tax—1939

Taxpayer shows long term capital gains on Marathon Paper Mills stock, which was acquired by him prior to March 1, 1913, the value being arrived at as follows:

Menasha Printing and Carton Co.—

Value March 1, 1913	\$350,000.00
July 1, 1917 invested	152,500.00
	<hr/>
	502,500.00
Less—Preferred stock sold July 1917.....	20,000.00
	<hr/>
	\$482,500.00
	<hr/>

Received for 3,357 shares Menasha Printing and Carton Co. stock, securities of Marathon Paper Mills Co., as follows:

\$1,038,000.00 par 5½% Bonds	\$ 1,038,000.00
6,728 shares Common stock @ \$130.30.....	876,658.40
	<hr/>
	\$ 1,914,658.40

\$ 1,038,000.00 equals 54.21% of total received.

876,568.40 equals 45.79% of total received.

45.79% of \$482,500.00 equals \$220,936.75 or original cost of 6,728 shares of common stock, or \$32.84 per share.

Stock was divided four for one, making original cost of present common shares \$8.21 per share.

Conferences are now pending with the Bureau of Internal Revenue to determine the correctness of the above value.

GEORGE S. GAYLORD

INCOME TAX—1939

Schedule H—Explanation of Deductions

Item 13—Contributions

California Chamber of Commerce	\$ 75.00
Hollywood Christmas Donation	60.00
Better America Federation	75.00
Pasadena Boy's Club	50.00

(Testimony of George S. Gaylord.)

Respondent's Exhibit D—(Continued)

Schedule H—Explanation of Deductions—(Continued)

Item 13—Contributions—(Continued)

Pasadena Foundation Boy's Camp	48.00
San Diego Community Chest	25.00
Monterey Community Chest	10.00
	<hr/>
	\$ 343.00
	<hr/>

Item 14—Interest

Mortgage indebtedness	\$ 450.00
	<hr/>

Item 15—Taxes

Pasadena property taxes	\$ 981.42
La Jolla Property taxes	185.64
Solvent credits tax	89.63
Carmel property taxes	252.52
Chicago property taxes	194.54
Club dues tax	22.00
Stock transfer taxes	16.00
Oil royalty tax	5.96
	<hr/>

Total deductible on State return.....	1,747.71
State income tax	557.96
	<hr/>

Total deductible on Federal return.....	\$2,305.67
	<hr/>

Item 18—Other deductions

In February 1939 heavy winds destroyed ornamental trees on residence property valued at \$5,300.00, one-half of which loss is claimed by wife of taxpayer	2,650.00
---	----------

Other expenses incurred by taxpayer are—Discount and exchange 284.83, accounting fees 80.20, jewelry purchase expense 99.08, selling* expense on lots sold 47.20, gold and securities sales expenses 53.01	564.32
	<hr/>

\$3,214.32

* Joint venture in jewelry closed out at profit in 1940, says Jas. W. Bontems. W.W.B. [Added in pencil]

(Testimony of George S. Gaylord.)

Respondent's Exhibit D—(Continued)

Form 1040F
Treasury Department
Internal Revenue Service

United States

1939

SCHEDULE OF FARM INCOME AND EXPENSES

Attach This Form
to Your Income
Tax Return Form
1040 and File It
With the Collector
of Internal Revenue
for Your DistrictFor Calendar Year 1939
Or for year beginning.....
1939, and ended..... 1940Fill in Pages 1 and
3 if Your Accounts
Are Kept on a Cash
Basis. If You Keep
Books on an Ac-
crual Basis and De-
sire to Use This
Form, Fill in Pages
2 and 3 Instead

Name

GEORGE S. GAYLORD

Address

639 Rosemont Avenue,
Pasadena, California

FARM INCOME FOR TAXABLE PERIOD

1. Sale of Livestock Raised

Kind	Quantity	Amount
Various, principally eggs		\$ 1,716.64
Total.....		\$ 1,716.64

(Enter on line 1)

SUMMARY OF INCOME AND DEDUCTIONS COMPUTED
ON A CASH RECEIPTS AND DISBURSEMENTS BASIS

1. Sale of livestock raised	\$1,716.64
2. Sale of produce raised	
3. Other farm income	
4. Sale of livestock and other items purchased.....	
5. Gross Profits	\$1,716.64
7. Expenses (from page 3)	\$4,018.66
8. Depreciation (from page 3)	744.45
Trees pulled as per explanation on page 3.....	4,320.00
9. Total Deductions	\$9,083.11
6. Net farm profit (line 5 minus line 9) to be reported in item 9 on Form 1040.....	\$7,366.47

FARM INVENTORY FOR INCOME COMPUTED
ON AN ACCRUAL BASIS

Not Applicable

SUMMARY OF INCOME AND DEDUCTIONS COMPUTED
ON AN ACCRUAL BASIS

[Followed by printed from not filled in]

425

PAGE EXPENSE FOR TABLE YEAR

1

1. Item	2. Amount	3. Item (Continued)	4. Amount (Continued)
Labor hired	991 37		
Feed purchased	2,002 67		
Seed, plants, and trees purchased			
Machine hire			
Supplies purchased			
Cost of repairs and maintenance	101 68		
Breeding fees			
Fertilizers and lime			
Veterinary and medicine			
Fuel and oil for farm work	275 16		
Storage			
Taxes (see instructions)			
Insurance on property (except your dwelling)	270 50		
Interest on farm notes and mortgages			
Water rent, electricity, and telephone	156 90		
Rent of farm or part of farm			
Freight, express, and trucking			
Sundry expenses	220 18		
TOTAL OF COLUMNS 2 AND 4 (Enter on line 7)			4,018 66

DISCUSSION

[illegible]

Trans. Am. Soc. 1900, p. 100.

744 45

1999

Due to exceedingly low market prices for fruit, trees averaging in age from 3 to 6 years, a total number of approximately 432, valued at \$10.00 each, were pulled in 1939, to make room for more profitable crops and livestock.

127

51

(Testimony of George S. Gaylord.)

Mr. Coon: These are the returns of Mrs. Gaylord, Gertrude H. Gaylord. For 1936——

The Judge: That will be Exhibit E.

(The said 1936 return of Gertrude H. Gaylord, so offered and received in evidence, was marked Respondent's Exhibit E, and made a part of this record.)

RETURN FROM BLANKED "COPYMASTER" MUST BE FILED WITH THIS ORIGINAL RETURN

RECEIVED

SECTION 1

DATE APR 9 1937

BY E F

INDIVIDUAL INCOME TAX RETURN

FOR NET INCOMES FROM SALARIES OR WAGES OF MORE THAN \$5,000
AND INCOMES FROM BUSINESS, PROFESSION, ETC., OR SALE OF PROPERTY

For Calendar Year 1936

or fiscal year beginning 1936, and ending 1937

File This Return Not Later Than the 15th Day of the Third Month Following the Close of the Taxable Year

PREPARE RETURN AND ATTACH PROPERLY SUPPORTED (See Instructions 26)

GERTRUDE H. GAYLORD

639 Rosemont Ave

Chicago, Ill.

Calif

1937

1936

1935

1934

1933

1932

1931

1930

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1920

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1918

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1914

1913

1912

AFFIDAVIT (See Instruction 27)

I, the undersigned (or others) that this return (including the accompanying schedule and statements, if any) has been examined by me, and to the best of my knowledge and belief is a true, correct, and complete return, made in good faith, for the taxable year herein stated thereunder.

Subscribed and sworn to by Gertrude H. Gaylord before me this 6th day of February, 1937

Alvin S. Jackson Notary Public for the State of California

A RETURN MADE BY AN AGENT MUST BE ACCOMPANIED BY POWER OF ATTORNEY (See Inst. 27)

AFFIDAVIT (See Instruction 27)

I, the undersigned (or others) that I have prepared this return for the person or persons named herein and that the return (including the accompanying schedule and statements, if any) is a true, correct, and complete statement of all the information respecting the income tax liability of the person or persons for whom this return has been prepared of which I have any knowledge.

Subscribed and sworn to before me this 10th day of February, 1937

Alvin S. Jackson Notary Public for the State of California

A RETURN MADE BY AN AGENT MUST BE ACCOMPANIED BY POWER OF ATTORNEY (See Inst. 27)

1-3

RECEIVED
SECTION 1
DATE APR 9 1937

INDIVIDUAL INCOME TAX RETURN For Calendar Year 1936

FOR NET INCOME FROM SALARIES OR WAGES OF MORE THAN \$1,000
AND INCOME FROM BUSINESS, PROFESSION, ART, OR RENT OF PROPERTY

or Total gross income from all sources

GEORGE H. GAYLORD

139 Belmont Ave

Passadena Calif

FILED
FEB 8 1937
OFFICE OF THE DISTRICT ATTORNEY
SANTA MONICA, CALIF.

15598

1. I am a resident of the United States.
2. I am a resident of the United States.
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10. I am a resident of the United States.



INCOME

1. Salaries, Wages, Commissions, Fees, etc. (from all sources)

2. Net Profit (or Loss) from Business or Profession. (See instructions 10.)

3. Interest on Bonds, Deposits, Notes, Corporation Bonds, etc. (except interest on tax-free government bonds).

4. Interest on Tax-Free Government Bonds (from United States or State of New York).

5. Dividends. (See instructions 11.)

6. Income from Real Estate. (See instructions 12.)

7. Income from Partnerships, Syndicates, Pools, etc. (Compute net income and list of income.)

8. Income from Pensions, Annuities, etc. (Compute net income and list of income.)

9. Capital Gains (or Losses). (See instructions 13.)

10. Other Income. (See instructions 14.)

11. Total Income for Year 1 to 11.

12. Deductions. (See instructions 15.)

13. Net Income. (See instructions 16.)

14. Total Income for Year 1 to 11.

15. Total Income for Year 1 to 11.

16. Total Income for Year 1 to 11.

17. Total Income for Year 1 to 11.

18. Total Income for Year 1 to 11.

19. Total Income for Year 1 to 11.

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30. Total Income for Year 1 to 11.

31. Total Income for Year 1 to 11.

32. Total Income for Year 1 to 11.

33. Total Income for Year 1 to 11.

34. Total Income for Year 1 to 11.

COMPUTATION OF TAX (See instructions 25)

1. Net Income (Item 13 above)

2. Less: Personal exemptions (See instructions 26)

3. Excess of Deductions (See instructions 27)

4. Balance (Net Income less Excess of Deductions)

5. Less: Income tax credit (See instructions 28)

6. Excess of Income credit (See instructions 29)

7. Balance subject to normal tax

8. Total Income for Year 1 to 11

9. Total Income for Year 1 to 11

10. Total Income for Year 1 to 11

11. Total Income for Year 1 to 11

12. Total Income for Year 1 to 11

13. Total Income for Year 1 to 11

14. Total Income for Year 1 to 11

15. Total Income for Year 1 to 11

16. Total Income for Year 1 to 11

17. Total Income for Year 1 to 11

18. Total Income for Year 1 to 11

AFFIDAVIT (See instructions 37)

I am aware (or believe) that this return, including the accompanying schedule (if any), is true and correct, and that the information furnished is true and correct, and that the return is not being prepared for the purpose of obtaining a refund of income tax or for the purpose of obtaining a refund of income tax credit.

Subscribed and sworn to before me this 16th day of February, 1937.

Notary Public for the State of California

Notary Public for the State of California

Notary Public for the State of California

Notary Public for the State of California

Notary Public for the State of California

Notary Public for the State of California

Notary Public for the State of California

Notary Public for the State of California

(Testimony of George S. Gaylord.)

Respondent's Exhibit E—(Continued)

GERTRUDE H. GAYLORD

Schedule C—Capital Gain

Purchases

1936	Held less than one year	
Feb. 14	200 B. & O., 21 $\frac{1}{4}$	\$4,285.
June 8	100 Swift, 24 $\frac{1}{4}$	2,442.50
"	100 do 24 $\frac{3}{8}$	2,455.
		<hr/>
		9,182.50

Sold

Nov. 30	200 B. O., 22	\$4,346.16
"	100 Swift, 24 $\frac{5}{8}$	2,439.40
"	100 do 24 $\frac{1}{2}$	2,426.90
		<hr/>
		9,212.46

Resulting Gain.....\$29.96

GERTRUDE H. GAYLORD

1936	Dividends received	
	Natl. Cash Register	\$ 620.00
	Swift	320.
	Cutler Hammer	275.
	Inter. Nickel	85.50
	Kennicott Copper	140.
		<hr/>
		1,440.50

Interest received

	Bank of Montreal	\$ 144.77
	Pulliam Mortg. Co.	148.14
		<hr/>
		292.91

[Endorsed]: T.C.U.S. Filed Apr. 2, 1943.

(Testimony of George S. Gaylord.)

Mr. Coon: Gertrude H. Gaylord's return for 1937.

The Judge: Exhibit F.

(The said 1937 return of Gertrude H. Gaylord, so offered and received in evidence was marked Respondent's Exhibit F, and made a part of this record.)

1937

UNITED STATES

INDIVIDUAL INCOME TAX RETURN

1937

Do not write in this space

(Auditor's Stamp)

Treasury Department

(FORM 1040)

Internal Revenue Service

FOR NET INCOMES FROM SALARIES, WAGES, INTEREST, AND
DIVIDENDS OF MORE THAN \$1,000, AND INCOMES FROM
OTHER SOURCES REGARDLESS OF AMOUNTS

For Calendar Year 1937 or Fiscal Year

beginning _____, 1937, and ended _____, 1938

Please return not later than the 15th day of the third month following the close of the taxable year

PRINT NAME AND ADDRESS PLAINLY (See Instructions B)

TEREKUKE H. TAYLOR

by Rosemary

P. O. Box 100

(Post office)

(County)

(State)

Do not use these spaces

1017

50142201

Deduct

(Cashier's Stamp)

or:

No. 1017, 101

Cash - Check - M. O.

Five Dollars

THE TAX COURT OF THE U. S.

DIV. 1 DOCKETS 101132

ADMITTED IN EVIDENCE 10-9-00

APR 2-1943

PETITIONERS

EXHIBIT

F

RESPONDENTS

Item and
Instruction No.

INCOME

1. Salaries and other compensation for personal services (from Schedule A) _____
2. Dividends from domestic and foreign corporations _____
3. Interest on bank deposits, notes, mortgages, etc. _____
4. Interest on corporation bonds _____
5. Taxable interest on Government obligations, etc. (from Schedule B) _____
6. Income (or loss) from partnerships, syndicates, pools, etc. (furnish name and address) _____
7. Income from fiduciaries (furnish name and address): _____
8. Rents and royalties (from Schedule C) _____
9. Income (or loss) from business or profession (from Schedule D) _____
10. Gain (or loss) from sale or exchange of property (from Schedule F) _____
11. Other income (state nature; use separate schedule if necessary) _____
12. Total income in items 1 to 11 (enter nontaxable income in Schedule H) _____

DEDUCTIONS

13. Contributions (explain in Schedule G) _____
14. Interest (explain in Schedule G) _____
15. Taxes (explain in Schedule G) _____
16. Losses by fire, storm, etc. (explain in Schedule G) _____
17. Bad debts (explain in Schedule G) _____
18. Other deductions authorized by law (explain in Schedule G) _____
19. Total deductions in items 13 to 18 _____
20. Net income (item 12 minus item 19) _____

COMPUTATION OF TAX

21. Net income (item 20 above) _____	\$ 500.42 15	28. Normal tax (4% of item 27) _____	\$ 14.81 65
22. Less: Personal exemption (from Schedule I) _____	\$ _____	29. Shortage on item 24 (see Instruction 29) _____	\$ 2.12 67
23. Credit for dependents (from Schedule I) _____	\$ _____	30. Total tax (item 28 plus item 29) _____	\$ 16.94 32
24. Balance (notes not income) _____	\$ 500.42 15	31. Less: Income tax paid at source _____	\$ _____
25. Less: Interest on Government obligations (item 5) _____	\$ _____	32. Income tax paid to a foreign country or U. S. possession _____	\$ _____
26. Earned income credit (from Schedule J) _____	\$ 300	33. Balance of tax (from 30 minus items 31 and 32) _____	\$ _____
27. Balance subject to normal tax _____	\$ 470.42 15		

NOTE.—One form marked "DUPLICATE COPY" must be filed with this original return (33 will be annexed if duplicate copy is not filed)

Schedule A—INCOME FROM SALARIES AND OTHER COMPENSATION FOR PERSONAL SERVICES. (See Instruction 1.)

1. Name and Address of Employer or Owner of Vehicle	2. Charges		3. Expenses (Detailed)	4. Amount
	\$			\$
Total column 2 minus total column 4 (enter on line 1, page 1).				\$

Total column 2 minus total column 4 (enter on line 1, page 1)

Schedule B—INTEREST ON GOVERNMENT OBLIGATIONS, ETC. (See Instructions B)

1. Obligations or Securities	2. Payable to	3. Interest payable to	4. Maturity date	5. Amount of obligation or security
(a) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia, or United States government.	1.	1.	All	00000000 00
(b) Obligations issued under Federal Farm Loan Act, or under such Act as amended.			All	00000000 00
(c) Obligations of United States issued on or before September 1, 1917.			All	00000000 00
(d) Treasury Notes, Treasury Bills, and Treasury Certificates of Indebtedness.			All	00000000 00
(e) U. S. Savings Bonds and Treasury Bonds.			1	
(f) Obligations of instrumentalities of the United States (other than obligations to be reported in (d) above).			None	
(g) Total (enter total of columns 5 on item 5, page 1).				1

Total (prior total of column 3 on Item 2, page 1).

Schedule C.—INCOME FROM RENTS AND ROYALTIES. (See instruction 8.)

1. Kind of Property	2. Amount	3. Depreciation Deduction in Schedule E	4. Expense	5. Other Expenses (Explain in column 5)	6. The Total Allowance (Sum of 3, 4, and 5)
Brick House	6190	700		38205	132615

Explanation of deductions claimed in column 5: Rental (living) water 28⁸² up to end of year 1964 - 21.40

Schedule D.—PROFIT (OR LOSS) FROM BUSINESS OR PROFESSION. (See Instructions B)

1. Total receipts (state nature of business or profession)		2. Total deductions (state nature of business or profession)	
COST OF GOODS SOLD		OTHER BUSINESS DEDUCTIONS	
1. Labor		10. Salaries not included as "Labor" (do not deduct compensation for yourself)	
2. Material and supplies		11. Interest on business indebtedness	
3. Merchandise bought for sale		12. Taxes on business and property	
4. Other costs (describe below)		13. Losses (explain in Schedule C)	
5. Plus inventory at beginning of year		14. Bad debts arising from sales or services	
6. Total (Lines 1 to 5)		15. Depreciation, amortization, and depletion (explain in Schedule E)	
7. Less inventory at end of year		16. Rent, repairs, and other expenses (describe below or on separate sheet)	
8. Net cost of goods sold (Line 6 minus Line 7)		17. Total (Lines 10 to 16)	
<p>Enter "C", "I", or "M" on lines 6 and 8 to indicate whether inventories are valued at cost, or cost or market, whichever is lower.</p>		<p>18. Total deductions (Line 9 plus line 17)</p> <p>19. Net profit (or loss) (Line 1 minus line 18) (enter as net profit or loss)</p>	

Explanation of deductions
claimed on lines 5 and 16

Part III. E—EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES C AND D

• 姓名 •	年	月	日	時	分	秒	刻
Jack House Brown	1901	10	26	1	40	27	31 . 90



(Testimony of George S. Gaylord.)

Respondent's Exhibit F—(Continued)

Schedule F.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF PROPERTY. (See Instruction 10)

[Followed by printed form not filled in]

Schedule G.—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 13, 14, 15, 16, 17, and 18

Line 18—Transfer Stamp Marathon Co.

Line 15—Real Estate Taxes.

Schedule H.—NONTAXABLE INCOME OTHER THAN INTEREST REPORTED IN SCHEDULE B. (See Inst. 12)

[Followed by printed form not filled in]

Schedule I.—EXPLANATION OF CREDITS CLAIMED IN ITEMS 22 AND 23. (See Instructions 22 and 23)

[Followed by printed form not filled in]

Schedule J.—COMPUTATION OF EARNED INCOME CREDIT. (See Instruction 26)

[Followed by printed form not filled in]

QUESTIONS

1. State your principal occupation or profession: Housewife.
2. Check whether you are a citizen [☒] or resident alien [☐].
3. If you filed a return for the preceding year, to which Collector's office was it sent? Los Angeles.
4. Are items of income or deductions of both husband and wife included in this return? (See Instruction B): No.
5. State name of husband or wife if a separate return was made, and the Collector's office to which it was sent: G. S. Gaylord, 639 Rosemont Ave., Pasadena, Calif.
6. Check whether this return was prepared on the cash [☒] or accrual [☐] basis.
7. Did you at any time during your taxable year own directly or indirectly any stock of a domestic or foreign personal holding company? (Answer "yes" or "no"): No. If answer is "yes", attach schedule required by Instruction M.

(Testimony of George S. Gaylord.)

Respondent's Exhibit F—(Continued)

AFFIDAVIT. (See Instruction F)

I/we swear (or affirm) that this return (including any accompanying schedules and statements) has been examined by me/us, and to the best of my/our knowledge and belief is a true, correct, and complete return, made in good faith, for the taxable year stated, pursuant to the Revenue Acts of 1936 and 1937, and the regulations issued thereunder.

GERTRUDE H. GAYLORD

(Signature) (See Instruction F)

Subscribed and sworn to by Gertrude H. Gaylord before me this 3rd day of March, 1938.

ALICE F. JACKSON

(Signature and title of officer administering oath)

My commission expires Sept. 19, 1939.

G. H. G.

Held less than one year

Bought

Jan. 5, 1937	100 Phillips Petroleum, 50 $\frac{1}{4}$	\$ 5,047.50
Jan. 8, 1937	100 Continental Oil, 44 $\frac{1}{2}$	4,470.60
Oct. 21, 1937	27 Marathon Pfd., 100	2,700.00

12,218.10

Cost..... 11,184.30

Loss..... 1,033.80

Sold

Sept. 23, 1937	100 Phillips Petroleum, 49 $\frac{1}{4}$	4,895.90
Sept. 23, 1937	100 Continental Oil, 39 $\frac{1}{8}$	3,888.17
Nov. 24, 1937	27 Marathon Pfd., 89	2,400.23

11,184.30

G. H. G.

Held one year less than 2—80%

Bought

Feb. 14, 1936	100 Kennecott Copper, 35 $\frac{1}{2}$	\$3,570.00
Feb. 14, 1936	100 International Nickel, 49 $\frac{3}{8}$	4,957.50

8,527.50

(Testimony of George S. Gaylord.)

Respondent's Exhibit F—(Continued)

G. H. G.—Held one year less than 2—80%—(Continued)

Sold

Sept. 23, 1937	100 Kennecott Copper, 48 $\frac{3}{8}$	4,808.40
Sept. 23, 1937	100 International Nickel, 50-53 $\frac{3}{4}$ 50-54	5,355.03
		<hr/>
		10,163.43
	Cost.....	8,527.50
		<hr/>
	Gain.....	1,635.93
		80%
		<hr/>
		1,308.74

G. H. G.

Held over 5 years less than 10—40%

Bought

Oct. 30, 1930—600 shares for \$19,440.00 Natl Cash Register	
Stock Div. —120 shares	
equals purchase price \$27.00 per share	
300 shares cost Natl Cash Register.....	\$8,100.00
Jan. 27/31 100 shares Cutler Hammer, 37 $\frac{1}{4}$	3,740.00
	<hr/>
	11,840.00

Sold

June 8, 1937	100 shares, 30	2,970.49
June 8, 1937	200 shares, 29 $\frac{7}{8}$	5,915.98
Sept. 28, 1937	100 shares Cut. H., 60	5,968.38
		<hr/>
		14,854.85
	Cost.....	11,840.00
		<hr/>
		3,014.85
		40%
		<hr/>
		1,205.94

(Testimony of George S. Gaylord.)

Respondent's Exhibit F—(Continued)

G. H. G.

Held over 10 years—30%

Bought

2100 shares Marathon Com. (see attached for

cost) 8.21\$17,241.00

Sold

Mar. 17, 1937 2,000 shares, 78 155,973.50

Apr. 12, 1937 100 shares, 81 8,068.75

164,042.25

Less Cost..... 17,241.00

146,801.25

30%

Gain..... 44,040.375SHOWING COST OF MARATHON PAPER MILLS
COM. STOCK

Menasha Printing and Carton Co.

Value Mar. 1, 1913\$350,000.00

July 1, 1917, Invested 152,500.00

502,500.00

Less Preferred Stock sold July 1917 20,000.00

482,500.00Received for 3357 shares Menasha Printing and Carton Co.
stock, securities of Marathon Paper Mills Co., as follows:

\$1,038,000.00 par 5½% Bonds\$ 1,038,000.00

6728 shares Common stock @ \$130.30 876,658.40

\$ 1,914,658.40

\$ 1,038,000.00 equals 54.21% of total received

876,658.40 equals 45.79% of total received

45.79% of \$482,500.00 equals \$220,936.75 or original cost of
6728 shares of common stock or \$32.84 per share.Stock was divided four for one, making original cost of present
common shares \$8.21 per share.

(Testimony of George S. Gaylord.)

Respondent's Exhibit F—(Continued)

G. H. G.

Capital Gains Total

	Gain	Loss
held less than one year		\$ 1,033.80
Held more one year, less than two.....	\$ 1,308.74	
Held more five years, less than ten	1,205.94	
Held more ten years	44,040.37	
	<hr/>	
	46,555.05	
Less loss.....	1,033.80	
	<hr/>	
	\$45,521.25	

Form 872

Conference

Treasury Department

Orig. to Bur. 2-17-41

Internal Revenue Service

(Revised May 1940)

Duplicate

LA:Conf.

CONSENT FIXING PERIOD OF LIMITATION UPON
ASSESSMENT OF INCOME AND PROFITS TAX

Feb. 14, 1941

In pursuance of the provisions of existing Internal Revenue Laws Gertrude H. Gaylord, a taxpayer (or taxpayers) of Pasadena, California, and the Commissioner of Internal Revenue hereby consent and agree as follows:

That the amount of any income, excess-profits, or war-profits taxes due under any return (or returns) made by or on behalf of the above-named taxpayer (or taxpayers) for the taxable year (or years) ended December 31, 1937, under existing acts, or under prior revenue acts, may be assessed at any time on or before June 30, 1942, except that, if a notice of a deficiency in tax is sent to said taxpayer (or taxpayers) by registered mail on or before said date, then the time for making any assessment as aforesaid shall be extended beyond the said date by the number

(Testimony of George S. Gaylord.)

Respondent's Exhibit E—(Continued)

of days during which the Commissioner is prohibited from making an assessment and for sixty days thereafter.

GERTRUDE H. GAYLORD

Taxpayer¹

GUY T. HELVERING

Commissioner of Internal Revenue

By G. D. M.

Date: 2-17-1941.

¹ This consent may be executed by the taxpayer's attorney or agent, provided such action is specifically authorized by a power of attorney, which, if not previously filed, must accompany the consent.

CC for Form 872

February 17, 1941

Mr. George S. Gaylord
Mrs. Gertrude H. Gaylord
c/o James W. Bontems,
215 W. 6th Street,
Los Angeles, California

Dear Sir and Madam:

872

December 31, 1937

June 30, 1942

WM

s.

[Signature stamp illegible]

[Endorsed]: T.C.U.S. Filed Apr. 2, 1943.

Mr. Coon: Gertrude H. Gaylord's return for 1938.

The Judge: Exhibit G.

(The said 1938 return of Gertrude H. Gaylord, so offered and received in evidence was marked Respondent's Exhibit G, and made a part of this record.)

412

Revenue Department

FORM 1040

UNITED STATES

1938 INDIVIDUAL INCOME TAX RETURN 1938

FILED

FOR NET INCOMES OF MORE THAN \$1,000 FROM SALARIES, WAGES, DIVIDENDS, INTEREST, ANNUITIES, AND FOR INCOMES FROM OTHER SOURCES REGARDLESS OF AMOUNTS

For Calendar Year 1938

or fiscal year beginning 1938, and ended 1938

(Before Preparing This Return, Read the Instructions Carefully)

To be filed with the Collector of Internal Revenue for your district not later than the 15th day of the third month following the close of your taxable year

PRINT NAME AND ADDRESS PLAINLY (Give Instructions II)

GERTRUDE L. J. YLORD

(Married) (Her full name and address, if a joint return)

639 Rosemont Avenue

(Street and number, or rural route)

Pasadena, Los Angeles, California

(Post office)

(County)

(State)

(Do not use these spaces)

E 1014

656040

6-Call

Check

(Cashier's Stamp)

Cash—Check—M. O.

First Payment

INCOME

1. Salaries and other compensation for personal services. (From Schedule A)
2. Dividends
3. Interest on bank deposits, notes, mortgages, etc.
4. Interest on corporation bonds
5. Taxable interest on Government obligations, etc. (From Schedule B)
6. Income (or loss) from partnerships, syndicates, pools, etc. (other than capital gains or losses). (Provide names and addresses)
7. Income from fiduciaries. (Provide names and addresses)
8. Rents and royalties. (From Schedule C)
9. Income (or loss) from business or profession. (From Schedule D)
10. (a) Net short-term gain from sale or exchange of capital assets. (From Schedule F)
- (b) Net long-term gain (or loss) from sale or exchange of capital assets. (From Schedule F)
- (c) Net gain (or loss) from sale or exchange of property other than capital assets. (From Schedule G)
11. Other income (including income from annuities). (Other returns use separate schedule if necessary)
12. Total income in items 1 to 11. (Enter net taxable income in Schedule I)

3,602 08
1,176 64

4,505 37

1,160 92
8,312 09

2,133 34

DEDUCTIONS

13. Contributions paid. (Explain in Schedule H)
14. Interest. (Explain in Schedule H)
15. Taxes. (Explain in Schedule H)
16. Losses from fire, storm, shipwreck, or other casualty, or theft. (Explain in Schedule H)
17. Bad debts. (Explain in Schedule H)
18. Other deductions authorized by law. (Explain in Schedule H)
19. Total deductions in items 13 to 18
20. Net income (item 12 minus item 19)

516 24
4,059 08

5,101 11

2,870 41

7,737 12

COMPUTATION OF TAX

21. Net income (item 20 above)	\$ 7,737 12	28. Normal tax (4% of item 27)	\$
22. Less: Personal exemption.	\$	29. Surtax on item 24. (See Instructions IV)	\$
(From Schedule J-1)		30. Total (item 28 plus item 29)	\$
23. Credit for dependents.	\$	31. Total tax (item 30, or if you had a net long-term capital gain or loss, enter line 16, Schedule F)	\$
(From Schedule J-2)		32. Less: Income tax paid at source.	\$
24. Balance (surplus net income)	\$	33. Income tax paid to a foreign country (U.S. Income Tax Return, Form 111)	\$
25. Less: Income on Government obligations on the Instructions II	\$	34. Balance of tax (item 31 minus items 32 and 33)	\$
26. Earned income credit.	\$		
(From Schedule E, I or R-2)			
27. Balance subject to normal tax	\$		

NOTE.—One here marked "DUPLICATE COPY" must be filed with this original return (It will be assumed if duplicate copy is not filed).

415

Schedule H.—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 13, 14, 15, 16, 17, AND 18

Page 4

Schedule L.—NONTAXABLE INCOME OTHER THAN INTEREST REPORTED IN SCHEDULE B. (See Instruction 13)

1. Name of source	2. Nature of income	3. Amount
		\$

Schedule J.—EXPLANATION OF CREDITS CLAIMED IN ITEMS 22 AND 23. (See Instructions 22 and 23)

(A) Personal Exemptions			(B) Credits for Dependents		
Name	Number of months during the year in each status	Credit claimed	Name of dependent and relationship	Number of months during the year	Credit claimed
				Under 18 years old	Over 18 years old
Single, or married and not living with husband or wife		\$			\$
Married and living with husband or wife	12	\$0.00			
Head of family (explain below)					
Reason for support if over 18 years old					

Schedule K.—COMPUTATION OF EARNED INCOME CREDIT. (See Instruction 24)

(A) If gross net income is \$14,000 or less, use only this part of schedule		(B) If gross net income is more than \$14,000, use only this part of schedule	
Net income (Item 28, page 1)	\$	Earned net income (not more than \$14,000)	\$
Earned income credit (10% of net income, above)		Net income (Item 28, page 1)	
		Earned income credit (10% of earned net income or net income, above, whichever amount is smaller, but do not enter less than \$300)	

QUESTIONS

1. State your principal occupation or profession. Investments
2. Check whether you are a citizen ☒ or a resident alien ☐.
3. If you filed a return for the preceding year, to which Collector's office was it sent? Los Angeles
4. Are there of income or deductions of both husband and wife included in this return? (See Instruction A) No
5. State name of husband or wife if a separate return was made; personal exemption, if any, claimed thereon; and the Collector's office to which it was sent. George S. Gaylord
Los Angeles - Item 2, 500.00
6. Check whether this return was prepared on the cash ☒ or accrual ☐ basis.
7. Did you at any time during your taxable year own directly or indirectly any stock of a foreign corporation or a personal holding company as defined by section 402? (Answer "yes" or "no") No (If answer is "yes," attach schedule required by Instruction M.)

AFFIDAVIT. (See Instruction F)

I, the undersigned (or others) that this return (including any accompanying schedules and statements) has been examined by me/ us, and to the best of my/ our knowledge and belief is a true, correct, and complete return, made in good faith for the taxable year stated, pursuant to the Revenue Act of 1938 and the regulations issued under authority thereof.

Subscribed and sworn to by Gertrude H. Gaylord
before me this 22nd day of February, 1943.
James W. Donahue
Notary Public
A return made by an agent must be accompanied by power of attorney. (See Instruction F)

AFFIDAVIT. (See Instruction F)

(If this return was prepared for you by some other person, the following affidavit must be executed)

I, the undersigned (or others) that I/ we prepared this return for the person or persons named herein and that the return (including any accompanying schedules and statements) is a true, correct, and complete statement of all the information respecting the income-tax liability of the person or persons for whom this return has been prepared of which I/ we have any knowledge.

Subscribed and sworn to before me this 15th day of Feb, 1943.
Dorothy Speck
Notary Public
To wit: For the County of Los Angeles, State of California. My Commission Expires Jan. 12, 1943.

James W. Donahue
Notary Public
JAMES W. DONAHUE & CO.
216 W. 6th St. LOS ANGELES

No Shares	Stock	Date Acquired	Date Sold	Cost	Proceeds	Profit
(a) 200	Waltham P. Mills	Jan. 17-1937	Apr. 22-			1,100.00
100	Lake Shore	Nov. 13				103.90
1,000	Waltham P. Mills	Mar. 22-1938	May 17-1938			65.52
				15,111.00	1,771.00	1,340.00
(b) 100	Lake Shore	Oct. 4-1937	Oct. 1-1938	5,000.00	5,000.00	0.00
(c) 100	Barnsdall Oil	Jan. 9-1937	Nov. 17-1938	1,271.15	3,487.95	1,230.50
100	Lowell P. Sxt.			602.50	1,458.20	772.36
100	Pure Oil			1,111.17	2,706.45	1,595.28
100	Amerada Oil	Apr. 7		7,100.00	1,331.45	3,666.45
500	Burr. Fiston H.	May 4	Dec. 23-	1,347.27	5,000.00	4,602.73
				12,071.15	25,744.95	11,403.22
(d) 2,200	United Dry Dock	Oct. 30-1936	Dec. 1-1938	1,244.53	7,535.00	6,270.47
	June 13-1936	exchanged 1 for 1				
(e) 200	Waltham P. Mills	Aug. 5-1938		9,397.50		
100		Sept. 12-		4,551.75		
100		9		4,598.75		
100				17,648.00	3,284.00	11,364.00

if you are 13 years old
- it is on record 2-0

(Testimony of George S. Gaylord.)

Respondent's Exhibit G—(Continued)

SHOWING COST OF MARATHON PAPER MILLS
COM. STOCK

Menasha Printing and Carton Co.

Value Mar. 1, 1913	\$350,000.00
July 1, 1917 Invested	152,500.00
	<hr/>
	502,500.00
Less Preferred Stock sold, July 1917.....	20,000.00
	<hr/>
	\$482,500.00

Received for 3,357 shares of Menasha Printing and Carton Co.
stock, securities of Marathon Paper Mills, Co., as follows:

\$1,038,000.00 par 5½% Bonds	1,038,000.00
6,728 shares Common stock @ \$130.30.....	876,658.40
	<hr/>
	\$ 1,914,658.40

\$ 1,038,000.00 equals 54.21% of total received

\$ 876,658.40 equals 45.79% of total received

45.79% of \$482,500.00 equals \$220,936.75 or original cost of
6,728 shares of common stock or \$32.84 per share.

Stock was divided four for one, making original cost of present
common shares \$8.21 per share.

(Testimony of George S. Gaylord.)

Respondent's Exhibit G—(Continued)

GERTRUDE H. GAYLORD

Item 18—Other Deductions

1938

Deductions claimed are as follows:

Taxpayer purchased a one-third interest in business block at Santa Monica, California. After renting property for approximately six months, additional space was required by some of the tenants. After consultation with contractors, it was determined that the building should be razed and a new building erected. The proportionate cost of the interest in the old building as determined from the tax bill valuations of real estate and improvements at the date nearest the date of purchase was.....\$5,076.11

Cost of insurance, etc., on gold bullion in foreign countries 125.00

\$5,201.11

[Endorsed]: T.C.U.S. Filed Apr. 2, 1943.

Mr. Coon: Gertrude H. Gaylord's return for 1939.

The Judge: Exhibit H.

(The said 1939 return of Gertrude H. Gaylord, so offered and received in evidence was marked Respondent's Exhibit H, and made a part of this record.)

FORM 1040
Treasury Department
Internal Revenue Service

UNITED STATES
INDIVIDUAL INCOME TAX RETURN 1939

Page 1

FOR NET INCOMES OF MORE THAN \$2,000 FROM SALARIES, WAGES,
DIVIDENDS, INTEREST, ANNUITIES, AND FOR INCOMES FROM
OTHER SOURCES REGARDLESS OF AMOUNTS

For Calendar Year 1939

or fiscal year beginning . . . 1939, and ended . . . 1940

To be filed with the Collector of Internal Revenue for every dollar not later than the 15th day of the third month following the close of your taxable year

PRINT NAME AND ADDRESS PLAINLY. (Show Restrictions, if any)

JOHN ROSSIGNOL, JR.
(Please print full name of husband and wife, if this is a joint return)

(Show and number, or street name)

BRIDGE ST. BOX 400199, NEW YORK

(Do not use these spaces)
2-777
5-25113

RECEIVED
MAR 16 1940

File with M.O.
For Payment

INCOME

1. Salaries and other compensation for personal services. (From Schedule A)		
2. Dividends	3,270	17
3. Interest on bank deposits, notes, mortgages, etc.	1,000	00
4. Interest on corporation bonds		
5. Taxable interest on Government obligations, etc. (From Schedule B)		
6. Income (or loss) from partnerships, syndicates, pools, etc. (other than capital gains or losses). (Attach name and address)		
7. Income from laborer's. (Attach name and address)		
8. Rents and royalties. (From Schedule C)	5,270	17
9. Income (or loss) from business or profession. (From Schedule D)		
10. (a) Net short-term gain from sale or exchange of capital assets. (From Schedule E)	2,200	00
(b) Net long-term gain (or loss) from sale or exchange of capital assets. (From Schedule F)	3,319	13
(c) Net gain (or loss) from sale or exchange of property other than capital assets. (From Schedule G)		
11. Other income (including income from annuities). (See notes)		
12. Total income in items 1 to 11. (Enter separate name in Schedule H)	\$ 15,711	71

DEDUCTIONS

13. Contributions paid. (Schedule I - Schedule K)		
14. Interest. (Schedule L - Schedule M)	150	00
15. Taxes. (Schedule N - Schedule O)	1,002	21
16. Losses from fire, storm, shipwreck, or other casualty, or theft. (Schedule P - Schedule Q)	2,450	00
17. Bad debts. (Schedule R - Schedule S)		
18. Other deductions authorized by law. (Schedule T - Schedule U)	10	00
19. Total deductions in items 13 to 18	\$ 3,612	21
20. Net income (Item 12 minus Item 19)	\$ 12,100	50

COMPUTATION OF TAX

21. Net income (Item 20 above)	\$ 12,100	50
22. Less: Personal exemption. (From Schedule V - W)		
23. Credit for dependents. (From Schedule X - Y)		
24. Balance (surplus net income)	\$ 12,100	50
25. Less: Income tax on Government obligations on the interest in		
26. Earned income credit. (From Schedule Z - AA - AB)	300	00
27. Balance subject to normal tax	\$ 11,800	50
28. Normal tax (4% of item 27)	\$ 472	20
29. Surplus on item 24. (See item 24)		
30. Total (Item 28 plus item 29)	\$ 1,352	52
31. Total tax (Item 30, or if you had a net long-term capital gain or loss, enter line 14, Schedule F)	\$ 1,352	52
32. Less: Income tax paid at source		
33. /		
34. Balance of tax (Item 31 minus item 32 and 33)	\$ 1,352	52

NOTE.—One form marked "DUPLICATE COPY" must be filed with this original return (it will be returned if duplicate copy is not filed)

1712-41

Schedule H - EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 12, 13, 14, 15, 17, AND 18

Page 4

1. Item No.	2. Deduction	3. Amount	4. Item No. (Continued)	5. Explanation (Continued)	6. Amount (Continued)
12	Mortgage indebtedness	\$ 450 00	16	Loss of trees in wind storm (1 taken by husband)	2,650 00
15	Property taxes	592 32	17	Accounting fees	50 29
	State income taxes	36 48		Discount and exchange	61 81
		1,000 21			104 00

Schedule I - NONTAXABLE INCOME OTHER THAN INTEREST REPORTED IN SCHEDULE B. (See Instruction G)

1. Source of income

2. Nature of income

3. Amount

Schedule J - EXPLANATION OF CREDITS CLAIMED IN ITEMS 22 AND 23. (See Instructions 22 and 23)

(1) Personal Exemption

(2) Credit for Dependents

Status	Number of credits during the year in each status	Credits claimed	Name of dependent and relationship	Number of credits during the year		Credits claimed
				Under 18 years old	Over 18 years old	
Single or married and not living with husband or wife						
Married and living with husband or wife	12	--				
Head of family (explain below)						
Reason for support if over 18 years old						

Schedule K - COMPUTATION OF EARNED INCOME CREDIT. (See Instruction 26)

(1) If your net income is \$14,000 or less, use only this part of schedule

(2) If your net income is more than \$14,000, use only this part of schedule

Net income (Item 28, page 1)	\$	Earned net income (not more than \$14,000)	\$
Earned income credit (10% of net income, above)		Net income (Item 20, page 1)	15,711 71
		Earned income credit (10% of earned net income or 10% of net income, above, whichever amount is smaller, but do not enter less than \$300)	300 00

QUESTIONS

1. State your principal occupation or profession. Investor
2. Check whether you are a citizen ☒ or a resident alien ☐.
3. If you filed a return for the preceding year, to which Collector's office was it sent? Los Angeles, Calif.
4. Are items of income or deductions of both husband and wife included in this return? No
5. State (a) Name of husband or wife if separate return was made George S. Rayford
- (b) Personal exemption, if any, claimed thereon 2500.00
- (c) Collector's office to which it was sent Los Angeles
6. Check whether this return was prepared on the cash ☒ or accrual ☐ basis.
7. Did you at any time during your taxable year own directly or indirectly any stock of a foreign corporation or a personal holding company as defined by section 501? (Answer "yes" or "no") No (If answer is "yes," attach statement required by instruction 13)

AFFIDAVIT. (See Instruction E)

I (we) swear (or affirm) that this return (including any accompanying schedules and statements) has been examined by me/us, and to the best of my/our knowledge and belief is a true, correct, and complete return, made in good faith, for the taxable year designated, pursuant to the Internal Revenue Code, as amended, and the regulations issued under authority thereof.

Subscribed and sworn to by Gertrude H. Rayford

before me this 27 day of Feb., 1943

Dorothy Grech

A return made by or under the authority of the person or persons named herein.

My Commission Expires Jan. 12, 1943 AFFIDAVIT. (See Instruction E)

(If this return was prepared for you by some other person, the following affidavit must be executed)

I (we) swear (or affirm) that I (we) prepared this return for the person or persons named herein and that the return (including any accompanying schedules and statements) is a true, correct, and complete statement of all the information respecting the income tax liability of the person or persons for whom this return has been prepared of which I (we) have any knowledge.

Subscribed and sworn to before me this 26 day

of Feb., 1943

Dorothy Grech

NOTARY PUBLIC

In and for the County of Los Angeles, State of California My Commission Expires Jan. 12, 1943



JAMES W. BONTOMS & CO.

210 W. 7TH ST. LOS ANGELES

744

(Testimony of George S. Gaylord)

Respondent's Exhibit H—(Continued)

GERTRUDE H. GAYLORD - RENTS - SCHEDULE

Location	Kind	Rents Received	Taxes	Insurance	Commissions	Other Expenses	Depreciation	Total Expenses	Net Income
Alhambra	Stores	\$2,560.77	\$ 444.13	\$ 44.00	\$ 326.25	(a) \$ 19.54	\$ 385.50	\$1,219.42	\$1,341.35
Amarillo	"	1,768.33	212.33	.....	.....	(b) 6.66	400.00	618.99	1,149.34
Harlingen	"	1,875.00	398.67	25.24	.....	.....	600.00	1,023.91	851.09
LaJolla	Dwelling	246.24	91.63	10.50	.....	.....	200.00	302.13	55.89
Santa Monica	Stores	3,454.46	868.53	38.72	.....	.....	562.93	1,470.18	1,984.28
		<u>\$9,904.80</u>	<u>\$2,015.29</u>	<u>\$ 118.46</u>	<u>\$ 326.25</u>	<u>\$ 26.20</u>	<u>\$2,148.43</u>	<u>\$4,634.63</u>	<u>\$5,270.17</u>

(a) Weed cleaning, etc.

(b) Architect's fee.

DEPRECIATION - SCHEDULE

Location	Kind	Date Acquired	Building Cost	Depreciation Prior Years	Remaining Cost	Used	Estimated Life at Beginning of Year	Depreciation This Year
Alhambra	Stucco and steel	Oct. 1938	\$ 7,787.69	\$ 77.75	\$ 7,709.94	20 years	20 years	\$ 385.50
Amarillo	Brick (1916)	June 1938	3,200.00	200.00	3,000.00	8 years	7½ years	400.00
Harlingen	Brick and hollow tile	Aug. 1937	12,000.00	600.00	11,400.00	20 years	19 years	600.00
LaJolla	Frame	1937	2,000.00	200.00	1,800.00	10 years	9 years	200.00
Santa Monica	Stucco and steel	1939	11,258.60	.....	11,258.60	20 years	20 years	562.93
								<u>\$2,148.43</u>

GERTRUDE H. GAYLORD

1939 CAPITAL GAINS AND LOSSES

Date of Sale	Description of Item	Number of Shares	Amount Received	Date Acquired	Cost or Basis	Profit or Loss	Taxable Income		
							Short Term Gains	Long Term Gains 18 to 24 Mos.	Over 24 Mos.
1-11-39	Marathon	100	\$ 3,727.75	3- 1-13	\$ 821.00	\$ 2,906.75	\$		\$ 2,906.75
1-20-39	McIntyre	100	5,384.24	8- 8-38	4,759.50	624.74	624.74		
1-11-39	Uchi 6's		4,650.00	10-24-38	4,350.00	300.00	300.00		
1-11-39	Dome Mines	100	3,216.00	10- 4-37	2,192.50	1,023.50	1,023.50		
1-11-39	Dome Mines	100	3,216.00	10- 4-37	2,192.50	1,023.50	1,023.50		
2- 4-39	411.048 oz. gold		14,100.07	1-17-38	14,499.34	399.27	399.27		
2-17-39	Hudson Bay M. & S.		3,369.93	4-22-38	2,670.00	699.93	699.93		
2-17-39	Phillips Petroleum		3,918.12	11-18-38	4,022.00	103.88	103.88		
2-17-39	McIntyre	100	5,197.64	8- 8-38	4,759.50	438.14	438.14		
2-17-39	Dome Mines	100	3,094.03	4-22-38	2,712.50	381.53	381.53		
3- 1-39	McIntyre P		5,471.74	10-24-38	5,025.00	446.74	446.74		
4-11-39	Marathon P	100	3,615.25	3- 1-13	821.00	2,794.25			2,794.25
6- 2-39	Marathon Paper	100	2,977.75	3- 1-13	821.00	2,156.75			2,156.75
6-13-39	Marathon Paper	100	3,023.75	3- 1-13	821.00	2,202.75			2,202.75
6-20-39	Marathon Paper	100	3,398.75	3- 1-13	821.00	2,577.75			2,577.75
11-11-39	Imperial Tobacco of Canada		2,954.00	10-24-38	3,090.00	136.00	136.00		
			<u>\$71,315.02</u>		<u>\$54,377.84</u>	<u>\$16,937.18</u>	<u>\$4,298.93</u>		<u>\$12,638.25</u>

(Testimony of George S. Gaylord.)

Respondent's Exhibit H—(Continued)

GERTRUDE H. GAYLORD

Income Tax—1939

Taxpayer shows long term gains on stock of Marathon Paper Mills sold during 1939, which was acquired by her by gift from her husband, George S. Gaylord, in December 1931. The basis for this stock is the basis to the donor, which was, on March 1, 1913, valued as follows:

Menasha Printing and Carton Co.—

Value March 1, 1913	\$350,000.00
July 1, 1917 invested	152,500.00
	<hr/>
	502,500.00
Less—Preferred stock sold July 1917.....	20,000.00
	<hr/>
	\$482,500.00
	<hr/>

Received for 3,357 shares Menasha Printing and Carton Co. stock, securities of Marathon Paper Mills Co., as follows:

\$1,038,000.00 par 5½% Bonds	\$ 1,038,000.00
6,728 shares Common stock @ \$130.30.....	876,658.40
	<hr/>
	\$ 1,914,658.40
	<hr/>

\$ 1,038,000.00 equals 54.21% of total received.

876,658.40 equals 45.79% of total received.

45.79% of \$482,500.00 equals \$220,936.75 or original cost of 6,728 shares of common stock, or \$32.84 per share.

Stock was divided four for one, making original cost of present common shares \$8.21 per share.

Conferences are now pending with the Bureau of Internal Revenue to determine the correctness of the above value.

[Endorsed]: T.C.U.S. Filed Apr. 2, 1943.

(Testimony of George S. Gaylord.)

Mr. Coon: Now, the fiduciary returns.

The Judge: All right.

Mr. Coon: I have the return, the fiduciary return of George S. Gaylord and Gertrude H. Gaylord, trustees, and so forth, for 1936.

The Judge: That will be Exhibit I. [350]

(The said 1936 fiduciary return so offered and received in evidence was marked Respondent's Exhibit I, and made a part of this record.)

(Testimony of George S. Gaylord.)

Respondent's Exhibit I—(Continued)

Schedule A—PROFIT (OR LOSS) FROM TRADE OR
BUSINESS. (See Instruction 1)

[Followed by printed form not filled in]

Schedule B—INCOME FROM RENTS AND ROYALTIES

(See Instruction 5)

[Followed by printed form not filled in]

Schedule C.—CAPITAL GAINS AND LOSSES (FROM
SALES OR EXCHANGES ONLY). (See Instruction 6)

See C attached

Schedule D.—INCOME FROM DIVIDENDS

Itemize all dividends received during the year, stating amounts
and names and addresses of corporations declaring the divi-
dends: Sunstrand Machine Tool Co., \$798.80.

Schedule E.—EXPLANATION OF DEDUCTIONS CLAIMED
IN ITEMS 10, 11, 13, 14, and 15

[Followed by printed form not filled in]

AFFIDAVIT. (See Instruction 24)

I swear (or affirm) that this return (including its accom-
panying schedules and statements, if any) has been examined
by me, and, to the best of my knowledge and belief, is a true,
correct, and complete return, made in good faith for the account-
ing period stated, pursuant to the Revenue Act of 1936 and the
Regulations issued thereunder.

GERTRUDE H. GAYLORD

(Signature of fiduciary or officer
representing fiduciary)

GEORGE S. GAYLORD

(Address of fiduciary or officer)

Trustees

Subscribed and sworn to before me this 8th day of February,
1937.

(Notarial Seal)

ALICE F. JACKSON

(Signature of officer administering oath)

Notary Public

(Title)

(Testimony of George S. Gaylord.)

Respondent's Exhibit I—(Continued)

SCHEDULE C

Capital Gains on Securities held less than one year

Bought Jun. 8 '36 200 Sundstrand M. Tool, 153¼.....\$3,150.00

Sold Oct. 16 '36

100 Sundstrand M. Tool, 22.....\$2,176.99

100 Sundstrand M. Tool, 22½..... 2,227.00

4,403.99

Gain.....\$1,253.99

Held over 10 years

The following shares acquired by Trustees by gift Nov. 7, 1935 from George S. Gaylord and his wife Gertrude H. Gaylord, who acquired hers from G. S. Gaylord in 1931 by gift.

The cost per share of the following Marathon Paper Mills Com. goes back to Mar. 1, 1913, as per explanation attached.

Sold

All the following is Marathon Paper Mills com.

Apr. 1, 1936	75	31	.....\$ 2,323.71
Apr. 7	175	31	..... 5,422.81
Apr. 7	250	30	..... 7,496.88
Apr. 15	1000	31	..... 30,999.30
May 20	250	33	..... 8,246.87
June 10	250	33¼	..... 8,309.37
Dec. 3	1000	42	..... 41,938.82
Dec. 4	500	42	..... 20,969.33
Dec. 11	500	42	..... 20,969.96
	4000		146,677.05

Cost per share (see attached) \$8.21

4000 shares @ \$8.21 32,840.

Gain..... 113,837.05

30% of \$113,837.05\$33,851.11

Plus gain held less than one year, above..... 1,253.99

Total Gain..... 35,105.10

(Testimony of George S. Gaylord.)

Respondent's Exhibit I—(Continued)

SHOWING COST OF MARATHON PAPER MILLS
COM. STOCK

Menasha Printing and Carton Co.

Value Marth 1, 1913	\$350,000.00
July 1, 1917 invested	152,500.00
	<hr/> 502,500.00
Less Preferred Stock sold, July 1917.....	20,000.00
	<hr/> 482,500.00

Received for 3357 shares Menasha Printing and Carton Company stock, securities of Marathon Paper Mills Co., as follows:

\$1,038,000.00 par 5½% Bonds.....	\$ 1,038,000.00	*54.21
6728 shares Common Stock @ 130.30.....	876,658.40	*45.79
	<hr/>	
	\$ 1,914,658.40*	=100.00%

\$ 1,038,000.00 equals 54.21% of total received.

876,658.40 equals 45.79% of total received.

45.79% \$482,500.00 equals \$220,936.75 or original cost of 6728 shares of common stock or \$32.84 per share.

Stock was divided four for one, making original cost of present common shares \$8.21 per share.

Interest Received

Pulliam Mortgage Co., 422 So. Spring St.,

Los Angeles	\$1,001.24
Bank of Montreal	152.39
	<hr/> 1,153.63

* Figures added in pencil.

[Endorsed]: T.C.U.S. Filed Apr. 2, 1943.

Mr. Coon: The trustee's return for the same parties for 1937.

The Judge: Exhibit J.

(The said trustee's return for 1937, so offered and received in evidence was marked Respondent's Exhibit J, and made a part of this record.)

(Testimony of George S. Gaylord.)

Respondent's Exhibit J—(Continued)

Schedule C.—INCOME FROM RENTS AND ROYALTIES.

(See Instruction 6)

[Followed by printed form not filled in]

Schedule D.—EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULE C. (See Instruction L)

[Followed by printed form not filled in]

Schedule E.—CAPITAL GAINS AND LOSSES FROM SALES OR EXCHANGES OF PROPERTY. (See Instruction 7.)

State how property was acquired: By gift Nov. 7, 1935.

Schedule F.—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 11, 12, and 13

[Followed by printed form not filled in]

Schedule G.—NONTAXABLE INCOME OTHER THAN INTEREST REPORTED IN SCHEDULE B. (See Instruction K)

[Followed by printed form not filled in]

QUESTIONS

1. If a return of income was filed for the preceding year, to which Collector's office was it sent? Los Angeles.
2. Date estate or trust was created: Nov. 7, 1935.
3. If copy of will or trust instrument and statement required under Instruction I have been previously furnished, state when and where filed: Nov. 7, 1935, Los Angeles.
4. Check whether this return was prepared on the cash [☒] or accrual [☐] basis.
5. Did the estate or trust at any time during the taxable year own directly or indirectly any stock of a domestic or foreign personal holding company? (Answer "Yes" or "No"). No. If answer is "yes," attach schedule as required by Instruction N.
6. If return is for a trust, does the trust instrument require or permit the accumulation of any portion of the income of the trust? Yes.
7. If return is for a trust, state name and address of grantor: George S. Gaylord - Gertrude H. Gaylord, 639 Rosemont Ave., Pasadena.

(Testimony of George S. Gaylord.)
Respondent's Exhibit J—(Continued)

AFFIDAVIT. (See Instruction F)

I swear (or affirm) that this return (including any accompanying schedules and statements) has been examined by me, and to the best of my knowledge and belief, is a true, correct, and complete return, made in good faith for the taxable year stated, pursuant to the Revenue Acts of 1936 and 1937 and the Regulations issued thereunder.

GEORGE S. GAYLORD
GERTRUDE H. GAYLORD
(Signature of fiduciary or officer representing fiduciary)

Subscribed and sworn to before me this 3rd day of March, 1938.

[Signature illegible]

Notary Public in and for the County of Los Angeles, State of California.

TRUSTEES

Held over 1 year, less than 2 yrs.—80%

Bought	Shares		
June 8, 1936	300	Sundstrand Meh. Tool, 15 ³ / ₄	\$4,725.00
Sold			
Sept. 10, 1937	100	Sundstrand Me. Tool, 18 ¹ / ₂	1,831.92
Sept. 23, 1937	200	Sundstrand Me. Tool, 17 ³ / ₄	3,513.92
Aug. 6, 1937	300	Sundstrand Rites, 2/32	15.12
Sold.....			5,360.96
Bought.....			4,725.00
			635.96
			80%
Gain.....			\$ 508.768

(Testimony of George S. Gaylord.)

Respondent's Exhibit J—(Continued)

TRUSTEES

Held over 10 years—30%

See attached for Marathon Paper Mills Com. Stock Cost as of
March 1, 1913, of \$8.21 per share.

Cost		
1600 Shares, \$8.21		\$ 13,126.00
Sold	Shares	
Feb. 19, 1937	500 Marathon Com., 65	32,493.75
March 17, 1937	1000 Marathon Com., 78	77,980.95
April 21, 1937	100 Marathon Com., 82½	8,242.52
		<hr/>
		118,717.22
	Less Cost	13,126.00
		<hr/>
		105,591.22
		30%
		<hr/>
	Gain	\$ 31,677.366
		<hr/>

SHOWING COST OF MARATHON PAPER MILLS
COM. STOCK

Menasha Printing and Carton Co.

Value Mar. 1, 1913	\$350,000.00
July 1, 1917 Invested	152,500.00
	<hr/>
	502,500.00
Less Preferred Stock sold, July 1917	20,000.00
	<hr/>
	482,500.00

Received for 3357 shares Menasha Printing and Carton Co.
stock, securities of Marathon Paper Mills Co., as follows:

\$1,038,000.00 par 5½% Bonds	\$ 1,038,000.00
6728 shares Common stock @ \$130.30	876,658.40
	<hr/>
	\$ 1,914,658.40

\$1,038,000.00 equals 54.21% of total received.

876,658.40 equals 45.79% of total received.

45.79% of \$482,500.00 equals \$220,936.75 or original cost of
6728 shares of common stock or \$32.84 per share.

Stock was divided four for one, making original cost of present
common shares \$8.21 per share.

(Testimony of George S. Gaylord.)

Respondent's Exhibit J—(Continued)

TRUSTEES

	Loss	Gain
Stocks held less than 1 year.....	\$12,504.55	
Stocks held 1 yr. less than 2 yrs.....		\$ 508.77
Stocks held over 10 yrs.		31,677.37
		<hr/>
		32,186.14
Less Loss.....		12,504.55
		<hr/>
Net Gain.....		19,681.59
		<hr/>

TRUSTEES 1937

Held less than one year

Bought	Shares	
June 8, 1937	100 Continental Oil Del., 44 $\frac{5}{8}$	\$ 4,483.10
June 4, 1937	100 Phillips Pet., 50 $\frac{1}{4}$	5,048.40
June 12, 1937	\$9,000 Third Ave. 5's 1960, 41.....	3,713.85
June	1,000 Third Ave. 5's 1960, 41 $\frac{3}{8}$	416.40
June	2,000 Third Ave. 5's 1960, 41 $\frac{3}{4}$	840.30
June	8,000 Third Ave. 5's 1960, 41 $\frac{7}{8}$	3,371.20
Mar. 15, 1937	20,000 Third Ave. 5's 1960, 39.....	7,851.60
Oct. 21, 1937	42 Marathon Paper Mills Pfd. (3.00 Div. on Com.) Par.....	4,200.00
		<hr/>
		29,924.85

Sold

Sept. 23, 1937	100 Continental Oil Del.	3,887.57
Sept. 14, 1937	100 Phillips Pet., 53	5,267.49
Aug. 3, 1937	\$1,000 Third Ave. 5's 1960, 16 $\frac{3}{4}$	164.59
Aug. 12, 1937	2,000 Third Ave. 5's 1969, 16 $\frac{1}{2}$	324.19
Aug. 24, 1937	1,000 Third Ave. 5's 1960, 15 $\frac{1}{4}$	149.59
Aug. 24, 1937	2,000 Third Ave. 5's 1960, 15 $\frac{1}{2}$	304.19
July 27, 1937	10,000 Third Ave. 5's 1960, 17.....	1,670.96
July 27, 1937	5,000 Third Ave. 5's 1960, 17 $\frac{1}{2}$	860.48
Dec. 28, 1937	9,000 Third Ave. 5's 1960, 55 $\frac{5}{8}$	491.38
Dec. 28, 1937	10,000 Third Ave. 5's 1960, 51 $\frac{1}{2}$	522.27
Nov. 16, 1937	42 Shares Marathon Pfd., 90.....	3,777.59
		<hr/>
		17,420.30

(Testimony of George S. Gaylord.)

Respondent's Exhibit J—(Continued)

Bought	\$29,924.85
Sold	17,420.30
Loss	12,504.55

[Endorsed]: T.C.U.S. Filed Apr. 2, 1943.

Mr. Coon: The fiduciary return for the same parties for 1938.

The Judge: Exhibit K.

(The said fiduciary return for 1938, so offered and received in evidence was marked Respondent's Exhibit K, and made a part of this record.)

(Testimony of George S. Gaylord.)

RESPONDENT'S EXHIBIT K

Treasury Department

Form 1041

Internal Revenue Service

United States

1938

FIDUCIARY INCOME TAX RETURN

1938

(For Estates and Trusts)

For Calendar Year 1938

or fiscal year beginning....., 1938, and ended....., 1939

File this return not later than the 15th day of the third month following the close of the taxable year

(Print Names and Address Plainly Below)

Name of Estate or Trust

GEORGE S. and GERTRUDE H. GAYLORD TRUST

(Auditor's
Stamp)Name and Address of
FiduciaryDo Not Use
This SpaceGeorge S. and Gertrude H.
Gaylord, TrusteesSerial No.
950452639 Rosemont Avenue
Pasadena, California

(Cashier's Stamp)

Item and
Instruction No.

INCOME

1. Dividends\$ 3,627.71
2. Interest on bank deposits, notes, corporation bonds, etc. (except interest to be reported in item 3)..... 1,252.36
6. Rents and royalties (from Schedule C) 4,641.64
7. (b) Net long-term gain (or loss) from sale or exchange of capital assets (from Schedule E)..... 12,305.49
10. Total income in items 1 to 9 (enter nontaxable income in Schedule B and H).....\$21,827.20

(Testimony of George S. Gaylord.)

Respondent's Exhibit K—(Continued)

Item and
Instruction No.

DEDUCTIONS

11. Interest (explain in Schedule G).....\$ 616.25
13. Other deductions authorized by law
(explain in Schedule G)..... 5,311.09
-
14. Total deductions in items 11 to 13.....\$ 5,927.34
-
15. Balance (item 10 minus item 14).....\$15,899.86
16. Less amount distributable to beneficiaries (from
Schedule A, columns 2 and 9, and Schedule B,
line (h), column 5)..... 15,899.86
-
17. Net income (taxable to fiduciary) (item 15
minus item 16)\$ none

COMPUTATION OF TAX

18. Net income (item 17 above).....\$ none
-
29. Balance of tax (item 26 minus items 27 and 28).....\$ none

Schedule A. — BENEFICIARIES' SHARES OF INCOME
AND CREDITS. (Include as beneficiaries persons to
whom amounts were paid or set aside for religious, chari-
table, etc., purposes) (See Instruction 16)

1. Name and address of each beneficiary
(designate nonresident aliens)

2. Taxable income exclu-
sive of interest on Gov-
ernment obligations and
dividends on share ac-
counts of Federal savings
and loan associations

- (a) Margaret G. Ruppel
- (b) 2225 Robles Avenue, Altadena\$ 7,949.93
- (c) Gertrude G. Bruce
- (d) 1466 Charlton Road, San Marino 7,949.93
-
- Total of beneficiaries' shares \$ 15,899.86

Schedule B.—INTEREST ON GOVERNMENT OBLIGA-
TIONS, ETC. (See Instruction 4)

[Followed by printed form not filled in]

(Testimony of George S. Gaylord.)

Respondent's Exhibit K—(Continued)

Schedule C.—INCOME FROM RENTS AND ROYALTIES.

(See Instruction 6)

[Followed by printed form not filled in]

Schedule D.—EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULE C, E, and F.

(See Instruction L)

[Followed by printed form not filled in]

Schedule E.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF CAPITAL ASSETS. (See Instruction 7)

1. Kind of property (if necessary attach statement of descriptive details not shown below)	4. Gross sales price (contract price)	5. Cost or other basis	8. Gain or loss (col. 4 plus col. 7 minus the sum of cols. 5 and 6)	9. %	10. Amount
--	---------------------------------------	------------------------	---	------	------------

Short-Term Capital Gains and Losses—Assets
Held Not More Than 18 Months

Item (a)	\$4,974.97	\$5,122.50	\$ 147.53	100	\$ 147.53
Item (b)	4,999.97	5,022.50	22.53	100	22.53

Total net short-term capital gain or loss (enter in line 1, column 2, of summary below)\$170.06

Long-Term Capital Gains and Losses—Assets Held for More
Than 18 Months But Not for More Than 24 Months

Item (c)	\$11,408.54	\$19,493.15	\$8,084.61	66 $\frac{2}{3}$	\$5,389.74
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Long-Term Capital Gains and Losses—Assets Held
for More Than 24 Months

Item (d)	\$43,600.45	\$8,210.00	\$35,390.45	50	17,695.23
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Total net long-term capital gain or loss (enter in line 2, column 2, of summary below)\$12,305.49

(Testimony of George S. Gaylord.)

Respondent's Exhibit K—(Continued)

Summary of Capital Net Gains or Losses

1. Classification	2. Gain	3. Loss
1. Total net short-term capital gain or loss (enter as item 7(a), page 1, amount of gain shown in col. 4)	\$ 170.06	No net loss allowable (See Instruction 7)
2. Total net long-term capital gain or loss (enter as item 7(b), page 1, amount of gain or loss shown in col. 4)	\$12,305.49	\$12,305.49

*2. Net gain or loss to be taken into account from col. 10, above.

*4. Total net gain or loss to be taken into account in columns 2 and 3 of this summary.

If any of the above items were acquired by you other than by purchase, explain fully how acquired: Item (d) acquired in formation of trust.

Schedule F.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF PROPERTY OTHER THAN CAPITAL ASSETS. (See Instruction 7)

[Followed by printed form not filled in]

Schedule G.—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 11, 12, and 13. (See Instructions 11, 12, and 13)

Item 11—Interest on mortgage indebtedness.

Schedule H.—NONTAXABLE INCOME OTHER THAN INTEREST REPORTED IN SCHEDULE B. (See Instruction 10)

[Followed by printed form not filled in]

QUESTIONS

1. If a return of income was filed for the preceding year, to which collector's office was it sent? Los Angeles.
2. Date estate or trust was created: Nov. 7, 1935.
3. If copy of will or trust instrument and statement required under Instruction I have been previously furnished, state when and where filed: Nov. 7, 1935: Los Angeles.

(Testimony of George S. Gaylord.)

Respondent's Exhibit K—(Continued)

Questions—(Continued)

4. Check whether this return was prepared on the cash [☒] or accrual [☐] basis.
5. Did the estate or trust at any time during the taxable year own directly or indirectly any stock of a foreign corporation or a personal holding company as defined in section 402? (Answer "Yes" or "No"): No. If answer is "yes" attach schedule as required by Instruction N.
6. If return is for a trust, does the trust instrument require or permit the accumulation of any portion of the income of the trust? No.
7. If return is for a trust, state name and address of grantor: George S. and Gertrude H. Gaylord, 639 Rosemont Ave., Pasadena.

AFFIDAVIT. (See Instruction F)

I swear (or affirm) that this return (including any accompanying schedules and statements) has been examined by me, and to the best of my knowledge and belief, is a true, correct, and complete return, made in good faith for the taxable year stated, pursuant to the Revenue Act of 1938 and the Regulations issued thereunder.

GEORGE S. GAYLORD

GERTRUDE H. GAYLORD

Trustees

(Signature of fiduciary or officer representing fiduciary)

Subscribed and sworn to before me this 23rd day of February, 1939.

(Seal)

ALICE F. JACKSON

Notary Public

My Commission Expires Sept. 19, 1939.

(If this return was prepared for you by some other person, the following affidavit must be executed)

AFFIDAVIT. (See Instruction F)

I/we swear (or affirm) that I/we prepared this return for the person named herein and that the return (including any accompanying schedules and statements) is a true, correct, and

(Testimony of George S. Gaylord.)

Respondent's Exhibit K—(Continued)

complete statement of all the information respecting the income tax liability of the person for whom this return has been prepared of which I/we have any knowledge.

JAMES W. BONTEMS

(Signature of person preparing this return)

JAMES W. BONTEMS & CO.

215 W. 6th St., Los Angeles

(Name of firm, or employer, if any)

Subscribed and sworn to before me this 21st day of February, 1939.

(Seal)

DOROTHY SPECKELS

(Signature of officer administering oath)

Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires Jan. 12, 1943.

GEORGE S. GAYLORD and GERTRUDE H. GAYLORD TRUST

Schedule C—Income from Rents and Royalties—1938

Property	Rent Received	Depreciation	Other Expense	Net Profit
1. Alhambra—business	697.41	77.75	35.10	584.56
2. Amarillo—business	1,063.53	200.00	64.75	798.78
3. McAllen—business	1,893.34	333.33	127.26	1,432.75
4. Santa Monica—business	1,856.58		31.03	1,825.55
	<u>5,510.86</u>	<u>611.08</u>	<u>258.14</u>	<u>4,641.64</u>

Schedule E—Depreciation claimed in Schedule C

	Date Acq.	Est. Res. Life	Cost	Remaining Cost	Deprn. this year
1. Stucco	1938	20 Y	3,110.00	3,110.00	77.75
2. Brick	1938	8 Y	3,200.00	3,200.00	200.00
3. Brick	1938	12 Y	8,000.00	8,000.00	333.33
			<u>14,310.00</u>	<u>14,310.00</u>	<u>611.08</u>

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GEORGE S. and GERTRUDE H. GAYLORD TRUSTSchedule E - Gains and Losses from Sales or Exchanges
of Capital Assets - 1938

No. <u>Shares</u>	<u>Stock</u>	<u>Date Acquired</u>	<u>Date Sold</u>	<u>Sales Price</u>	<u>Cost or Basis</u>	<u>Profit or Loss</u>
(a) 100	Lake Shore N.	Nov. 10-37	Oct. 24-38	\$4,974.97	\$5,122.50	\$ 147.53
(b) 100	Lake Shore N.	Sep. 30-37	Oct. 24-38	4,999.97	5,022.50	22.53
(c) 100	Barnsdall Oil	Jan. 5-37	Nov. 18-38	1,777.46	2,695.45	917.99
100	Creole Pet.	" 8-37	" " "	2,262.74	3,758.10	1,495.36
100	Louisiana Land	" " "	" " "	882.94	1,455.30	572.36
100	Pure Oil	" " "	" " "	1,048.92	2,192.80	1,143.88
100	Standard Ind.	" " "	" " "	2,811.74	4,798.75	1,986.01
100	Shelly Oil	" " "	" " "	2,824.74	4,895.75	1,771.01
				11,408.84	19,493.15	8,084.31
(d) 100	Marathon Paper					
100	Mills Co.	Nov. 7-35	Aug. 5-38	4,319.75		
100	(acquired from trustees	" " "	" " "	4,444.75		
200	Nov. 7, 1935 basis		Sept. 20-38	9,203.50		
100	being March 1, 1913		Oct. 4-38	4,326.75		
100	value, same as in hands		Oct. 5-38	4,376.75		
100	of trustees.)		Oct. 25-38	4,228.75		
50			Oct. 26-38	2,111.65		
150			Nov. 5-38	6,338.00		
100			Nov. 15-38	4,251.75		
1,000	Totals			43,600.45	8,210.00	35,390.45

x.6

(Testimony of George S. Gaylord.)

Respondent's Exhibit K—(Continued)

SHOWING COST OF MARATHON PAPER MILLS
COM. STOCK

Menasha Printing and Carton Co.

Value Mar. 1, 1913 \$350,000.00

July 1, 1917 Invested 152,500.00

502,500.00

Less Preferred Stock Sold, July 1917 20,000.00

\$482,500.00Received for 3,357 shares Menasha Printing and Carton Co.
stock, securities of Marathon Paper Mills Co., as follows:

\$ 1,038,000.00 par 5½% Bonds \$ 1,038,000.00

6,728 shares Common Stock @ \$130.30 876,658.40

\$ 1,914,658.40

\$ 1,038,000.00 equals 54.21% of total received.

876,658.40 equals 45.79% of total received

45.79% of \$482,500.00 equals \$220,936.75 or original cost of
6,728 shares of common stock or \$32.84 per share.Stock was divided four for one, making original cost of present
common shares \$8.21 per share.

(Testimony of George S. Gaylord.)

Respondent's Exhibit K—(Continued)

GEORGE S. and GERTRUDE GAYLORD TRUST

Item 18—Other Deductions—1938

Deductions claimed are as follows:

Taxpayer purchased a one-third interest in business block at Santa Monica, California. After renting property for approximately six months, additional space was required by some of the tenants. After consultation with contractors, it was determined that the building should be razed and a new building erected. The proportionate cost of the interest in the old building as determined from the tax bill valuations of real estate and improvements at the date nearest the date of purchase was.....		\$5,076.11
Cost of insurance, etc. on gold bullion in foreign countries	234.98	
		<u>\$5,311.09</u>

[Endorsed]: T.C.U.S. Filed Apr. 2, 1943.

Mr. Coon: The fiduciary return for the same parties for 1939.

The Judge: Exhibit L.

(The said fiduciary return for 1939, so offered and received in evidence was marked Respondent's Exhibit L, and made a part of this record.)

(Testimony of George S. Gaylord.)

RESPONDENT'S EXHIBIT L

[Stamped] Received Jan. 10, 1940. Revenue Agent in Charge,
Los Angeles Division.

Treasury Department

Form 1041

Internal Revenue Service

United States

1939 FIDUCIARY INCOME TAX RETURN 1939

(For Estates and Trusts)

For Calendar Year 1939

or fiscal year beginning _____, 1939, and ended _____, 1940

File this return not later than the 15th day of the third
month following the close of the taxable year

(Print Names and Address Plainly Below)

Name of Estate or Trust

GEORGE S. and GERTRUDE H. GAYLORD TRUST

(Auditor's
Stamp)Name and Address of
FiduciaryDo Not Use
These SpacesGeorge S. and Gertrude H.
Gaylord, TrusteesSerial No.
952650639 Rosemont Avenue,
Pasadena, California

(Cashier's Stamp)

Item, and
Instruction No.

INCOME

1. Dividends _____ \$ 2,193.47
2. Interest on bank deposits, notes, corporation bonds, etc. (except interest to be reported in item 3) _____ 768.86
6. Rents and royalties (from Schedule C) 8,302.56
7. (a) Net short-term gain from sale or exchange of capital assets (from Schedule E) _____ 6,202.27
- (b) Net long-term gain (or loss) from sale or exchange of capital assets (from Schedule E) _____ 5,557.88
10. Total income in items 1 to 9 (enter nontaxable income in Schedules B and H) _____ \$23,025.04

(Testimony of George S. Gaylord.)

Respondent's Exhibit L—(Continued)

Item and Instruction No.	DEDUCTIONS
11. Interest (explain in Schedule G).....\$	450.00
13. Other deductions authorized by law (explain in Schedule G)	109.65
14. Total deductions in items 11 to 13.....	559.65
15. Balance (item 10 minus item 14).....	\$22,465.39
16. Less amount distributable to beneficiaries (from Schedule A, columns 2, 7b, 8b, and 9).....	22,465.39

COMPUTATION OF TAX

18. Net income (item 17 above).....\$	None
29. Balance of tax (item 26 minus items 27 and 28) \$	None

Schedule A. — BENEFICIARIES' SHARES OF INCOME AND CREDITS. (Include as beneficiaries persons to whom amounts were paid or set aside for religious, charitable, etc., purposes) (See Instruction 16)

1. Name and addresses of each beneficiary (designate nonresident aliens)	2. Taxable income exclusive of interest on Government obligations and dividends on share accounts of Federal savings and loan asso- ciations
(a) Margaret G. Ruppel	
(b) 2225 Robles Avenue, Altadena	\$ 11,232.70
(c) Gertrude G. Bruce,	
(f) 1466 Charlton Road, San Marino	11,232.69
Total of beneficiaries' shares	\$ 22,465.39

Schedule B. — INTEREST ON GOVERNMENT OBLIGATIONS, ETC. (See Instruction 4)

[Followed by printed form not filled in]

Schedule C. — INCOME FROM RENTS AND ROYALTIES
(See Instruction 6)

See Schedule Attached

(Testimony of George S. Gaylord.)

Respondent's Exhibit L.—(Continued)

Schedule D.—EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES C, E, AND F. (See Instruction L.)

See Schedule Attached

Schedule E.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF CAPITAL ASSETS. (See Instruction 7)

	8. Gain or loss (col. 4 plus col. 7 minus the sum of cols. 5 and 6)	Gain or loss to be taken into account	
		9. %	10. Amount
Short-Term Capital Gains and Losses—Assets Held Not More Than 18 Months			
See Schedule Attached	\$ 6,202.27	100	\$6,202.27
Long-Term Capital Gains and Losses—Assets Held for More Than 24 Months			
See Schedule Attached	\$11,115.75	50	\$5,557.88

Summary of Capital Net Gains or Losses

1. Classification	3. Net gain or loss to be taken into account from col. 10, above	5. Total net gain or loss to be taken into account in cols. 2, 3 and 4 of this summary
	Gain	Gain
1. Total net short-term capital gain or loss (enter as item 7(a), page 1, amount of gain shown in col. 5).....	\$6,202.27	\$6,202.27
2. Total net long-term capital gain or loss (enter as item 7(b), page 1, amount of gain or loss shown in col. 5).....	\$5,557.88	\$5,557.88

State the family, fiduciary, or business relationship to you, if any, of purchaser of any of the above items. None.

If any of the above items were acquired by you other than by purchase, explain fully how acquired: See schedule attached.

(Testimony of George S. Gaylord.)

Respondent's Exhibit L—(Continued)

Schedule F.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF PROPERTY OTHER THAN CAPITAL ASSETS. (See Instruction 7)

[Follow by printed form not filled in]

Schedule G.—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 11, 12, and 13. (See Instructions 11, 12, and 13)

1. Item No.	2. Explanation	3. Amount
11	Mortgage indebtedness	\$ 450.00
13	Accounting fees	80.19
	Discount, etc.	29.46
		<hr/>
		\$ 109.65

Schedule H.—NONTAXABLE INCOME OTHER THAN INTEREST REPORTED IN SCHEDULE B. (See Instruction 10)

[Followed by printed form not filled in]

QUESTIONS

1. If a return of income was filed for the preceding year, to which collector's office was it sent? Los Angeles.
2. Date estate or trust was created: Nov. 7, 1935.
3. If copy of will or trust instrument and statement required under Instruction I have been previously furnished, state when and where filed: Nov. 7, 1935, Los Angeles.
4. Check whether this return was prepared on the cash [☒] or accrual [☐] basis.
5. Did the estate or trust at any time during the taxable year own directly or indirectly any stock of a foreign corporation or a personal holding company as defined in section 501? (Answer "Yes" or "No"): No. If answer is "yes," attach schedule as required by Instruction N.
6. If return is for a trust, state name and address of grantors: George S. Gaylord and Gertrude H. Gaylord, 639 Rosemont Avenue, Pasadena, Cal.

(Testimony of George S. Gaylord.)

Respondent's Exhibit I.—(Continued)

AFFIDAVIT. (See Instruction F)

I swear (or affirm) that this return (including any accompanying schedules and statements) has been examined by me, and to the best of my knowledge and belief, is a true, correct and complete return, made in good faith for the taxable year stated, pursuant to the Internal Revenue Code, as amended, and the regulations issued thereunder.

GEORGE S. GAYLORD

GERTRUDE H. GAYLORD

(Signature of fiduciary or officer representing fiduciary)

Subscribed and sworn to before me this 27th day of February, 1940.

(Seal)

DOROTHY SPECKELS

(Signature of officer administering oath)

Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires Jan. 12, 1943.

(If this return was prepared for you by some other person, the following affidavit must be executed.)

AFFIDAVIT. (See Instruction F)

I/we swear (or affirm) that I/we prepared this return for the person named herein and that the return (including any accompanying schedules and statements) is a true, correct, and complete statement of all the information respecting the income tax liability of the person for whom this return has been prepared of which I/we have any knowledge.

JAMES W. BONTEMS

(Signature of person preparing the return)

JAMES W. BONTEMS & CO.

215 W. 6th St., Los Angeles

(Name of firm, or employer, if any)

Subscribed and sworn to before me this 26 day of February, 1940.

(Seal)

DOROTHY SPECKELS

(Signature of officer administering oath)

Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires Jan. 12, 1943.

(Testimony of George S. Gaylord)

Respondent's Exhibit L—(Continued)

GEORGE S. GAYLORD AND GERTRUDE H. GAYLORD TRUST

RENTS - SCHEDULE

Location	Kind	Rent Received	Taxes	Insurance	Commissions	Other Expenses	Depreciation	Total Expenses	Net Income
Alhambra	Stores	\$ 2,560.77	\$ 444.12	\$ 44.00	\$ 326.25	(a) \$ 19.55	\$ 385.50	\$1,219.42	\$1,341.35
Amarillo	"	1,768.34	259.82	.....	.....	(b) 6.66	400.00	666.48	1,101.86
Alice	"	3,546.47	722.85	39.68	.....	.....	1,050.00	1,812.53	1,733.94
Harlingen	"	1,875.00	398.66	8.22	.....	.....	600.00	1,006.88	868.12
McAllen	"	2,443.56	352.55	107.85	.....	.....	666.67	1,127.07	1,316.49
Santa Monica	"	3,410.98	868.53	38.72	.....	.....	562.93	1,470.18	1,940.80
		<u>\$15,605.12</u>	<u>\$3,046.53</u>	<u>\$ 238.47</u>	<u>\$ 326.25</u>	<u>\$ 26.21</u>	<u>\$3,665.10</u>	<u>\$7,302.56</u>	<u>\$8,302.56</u>

(a) Weed expense, etc.

(b) Architect's fee.

DEPRECIATION - SCHEDULE

Location	Kind	Date Acquired	Building Cost	Depreciation prior years	Remaining Cost	Used	At beginning of year	Depreciation this year
Alhambra	Stucco and steel	Oct. 1938	\$ 7,787.69	\$ 77.75	\$ 7,709.94	20 Years	20 Years	\$ 385.50
Amarillo	Brick (1916)	June 1938	3,200.00	200.00	3,000.00	8 Years	7½ Years	400.00
Alice	Brick	July 1938	21,000.00	.....	21,000.00	20 Years	20 Years	1,050.00
Harlingen	Brick and hollow tile	1937	12,000.00	600.00	11,400.00	20 Years	19 Years	600.00
McAllen	Brick (1921)	1938	8,000.00	333.33	7,666.67	12 Years	11½ Years	666.67
Santa Monica	Stucco and steel	1939	11,258.60	.....	11,258.60	20 Years	20 Years	562.93
								<u>\$3,665.10</u>

GEORGE S. GAYLORD AND GERTRUDE H. GAYLORD, TRUST

1939 CAPITAL GAINS AND LOSSES

Date of Sale	Description	Shares	Amount Received	Date Acquired	Cost or Basis	Profit or Loss	Short term gains	Taxable Income	
								Long Term	Gains
								18 to 24 Mos.	Over 24 Mos.
1-11-39	Dome Mines	200	\$ 6,418.69	9-30-37	\$ 4,395.00	\$ 2,023.69	\$2,023.69		\$
1-11-39	Noranada	100	8,033.35	4-22-38	5,775.00	2,258.35	2,258.35		
1-27-39	751,853 oz. gold.....		25,792.08	1-17-38	26,541.00	748.92	748.92		
2-19-39	Dome Mines	100	3,094.93	4-22-38	2,725.00	369.93	369.93		
2-19-39	Phillips Pet.	100	5,196.74	11-18-38	4,072.00	1,124.74	1,124.74		
2-20-39	McIntyre Poreupine	100	5,196.74	8- 5-38	4,747.00	449.74	449.74		
3-14-39	Marathon P.	100	3,671.50	11- 7-35	821.00	2,850.50			2,850.50
4- 8-39	Marathon P.	100	3,652.75	11- 7-35	821.00	2,831.75			2,831.75
4- 8-39	Marathon P.	100	3,697.75	11- 7-35	821.00	2,876.75			2,876.75
4-10-39	McIntyre P.	100	5,471.74	8- 5-38	4,747.00	724.74	724.74		
4-21-39	Marathon P.	100	3,377.75	11- 7-35	821.00	2,556.75			2,556.75
			<u>\$73,604.02</u>		<u>\$56,286.00</u>	<u>\$17,318.02</u>	<u>\$6,202.27</u>		<u>\$11,115.75</u>

(Testimony of George S. Gaylord.)

Respondent's Exhibit L—(Continued)

GEORGE S. AND GERTRUDE H. GAYLORD TRUST

Income Tax—1939

This trust shows long term capital gains on sale of Marathon Paper Mills stock which was acquired by gift November 7, 1935, from George S. Gaylord and Gertrude H. Gaylord. The basis of this stock is the March 1, 1913 value to George S. Gaylord, arrived at as follows:

Menasha Printing and Carton Co.

Value March 1, 1913	\$350,000.00
July 1, 1917 invested	152,500.00
	<hr/>
	502,500.00
Less—Preferred stock sold July 1917.....	20,000.00
	<hr/>
	\$482,500.00
	<hr/>

Received for 3,357 shares Menasha Printing and Carton Co. stock, securities of Marathon Paper Mills Co., as follows:

\$1,038,000.00 par 5½% Bonds	\$ 1,038,000.00
6,728 shares Common stock @ \$130.30.....	876,658.40
	<hr/>
	\$ 1,914,658.40
	<hr/>

\$ 1,038,000.00 equals 54.21% of total received.

876,658.40 equals 45.79% of total received.

45.79% of \$482,500.00 equals \$220,936.75 or original cost of 6,728 shares of common stock, or \$32.84 per share.

Stock was divided four for one, making original cost of present common shares \$8.21 per share.

Conferees are now pending with the Bureau of Internal Revenue to determine the correctness of the above value.

(Testimony of George S. Gaylord.)

Respondent's Exhibit L—(Continued)

POWER OF ATTORNEY

Know All Men By These Presents: That we, George S. Gaylord and Gertrude H. Gaylord, Trustees, of the George S. and Gertrude H. Gaylord, Trust, do by these presents make, constitute and appoint James W. Bontems, Certified Public Accountant, of Los Angeles, California, our true and lawful attorney to appear for us and represent us before the Treasury Department of the United States, or any bureau thereof, or any official or officials of said Department, in all matters pertaining to the determination, assessment, collection, or payment of any taxes which may be due by us to the United States, or pertaining to claims for abatement, refund or credit based on the assessment or payment of any amounts as such taxes.

It is requested that a copy of all communications, addressed to the undersigned, regarding any matter in which the said attorney is hereby authorized to act be addressed to James W. Bontems, Certified Public Accountant, 215 West Sixth Street, Los Angeles, California.

All powers of attorney for this purpose heretofore filed or executed by us are hereby revoked.

(Testimony of George S. Gaylord.)

Respondent's Exhibit L—(Continued)

In Witness Whereof, we have hereunto set our hands and seals this 17th day of October, 1939.

GEORGE S. and GERTRUDE
H. GAYLORD, TRUST

(Seal) Signed by: GEORGE S. GAYLORD

(Seal) Signed by: GERTRUDE H. GAYLORD
Trustees

Witnesses:

Signed: J. E. BERNSDORF

Signed: HENRIETTA MILLER

(Original)

INSTRUMENT OF APPOINTMENT BY
GEORGE S. GAYLORD OF SUCCESSOR
TRUSTEES

Know All Men By These Presents:

Whereas in and by that certain declaration of trust dated the 7th day of November, 1935, the undersigned George S. Gaylord and Gertrude H. Gaylord, his wife (who, though more than one, are also in said declaration of trust called "trustee") do hereby certify and declare that they hold and shall and will hold the following described personal property, to-wit, seven thousand (7000) shares of the common capital stock of Marathon Paper Mills Company, a Wisconsin corporation, of the par value of \$25.00 per share, and any and all proceeds thereof, In Trust, Nevertheless, for the uses and purposes and upon the terms and conditions set

(Testimony of George S Gaylord.)

Respondent's Exhibit L—(Continued)

forth in said declaration of trust, reference being hereby made to said declaration of trust for further particulars thereof, and which said trust has at all times been and is irrevocable, and which said declaration of trust was executed in quadruplicate by said George S. Gaylord and Gertrude H. Gaylord, the trustors and trustees therein named, who under date of December 11, 1935, acknowledged before J. C. Humphreys, a notary public in and for the County of Los Angeles, State of California, their, the said George S. Gaylord and Gertrude H. Gaylord's, execution of said declaration of trust, and which said declaration of trust was recorded on September 23, 1937, in the office of the County Recorder of Los Angeles County, California, in Book 15288 at Page 94 of Official Records of said County; and

Whereas, in and by article XI of said declaration of trust it is provided, among other things, that said George S. Gaylord shall have the right by an instrument in writing signed by him and acknowledged by him before a notary public, or other officer authorized to take acknowledgments, which acknowledgment shall be certified so as to entitle the same to be recorded, and recorded in the office of said County Recorder of the County of Los Angeles, State of California, to appoint the successor or successors as the trustee (whether one or more) of the trust created and provided for in said declaration of trust in the event that neither

(Testimony of George S Gaylord.)

Respondent's Exhibit L—(Continued)

of the two original trustees of said trust, viz., said George S. Gaylord and Gertrude H. Gaylord, is acting as the trustee of said trust; and

Whereas, George S. Gaylord desires to appoint, pursuant to the provisions of said declaration of trust such successor or successors as the trustee (whether one or more) of said trust in the event that neither of said two original trustees of said trust, viz., said George S. Gaylord and Gertrude H. Gaylord, is acting as the trustee of said trust;

Now, Therefore, said George S. Gaylord does hereby appoint his daughter Margaret Gaylord Ruppel and his son-in-law Eugene L. Bruce, who is the husband of said George S. Gaylord's daughter Gertrude Gaylord Bruce, and the survivor of said Margaret Gaylord Ruppel and Eugene L. Bruce, trustees or trustee (as the case may be) of said trust in the event that neither of said two original trustees George S. Gaylord and Gertrude H. Gaylord is acting as the trustee of said trust, and does hereby appoint said Margaret Gaylord Ruppel and Eugene L. Bruce and the survivor of them the successors or successor (as the case may be) as the trustee (whether one or more) of said trust in such event that neither of said two original trustees of said trust, said George S. Gaylord and Gertrude H. Gaylord, is acting as the trustee of said trust. Said appointees Margaret Ruppel and Eugene L. Bruce and the survivor of

(Testimony of George S Gaylord.)

Respondent's Exhibit L—(Continued)

them in such event of neither said George S. Gaylord and Gertrude H. Gaylord acting as the trustee of said trust to be vested with the trust estate mentioned and referred to in said declaration of trust as the same then exists, together with all title of the trustee referred to in said declaration of trust to said trust estate and together with all rights, powers, authorizations, exemptions and discretions in and by said declaration of trust vested in said George S. Gaylord and Gertrude H. Gaylord as trustee thereunder, and subject to all of the duties and obligations imposed in said declaration of trust upon the trustee therein referred to, all without any or further conveyance, assignment, transfer or act by or on the part of said George S. Gaylord and Gertrude H. Gaylord or either of them. In no event shall any bond or bonds or other security whatever ever be required of either of the hereinbefore named appointees for the performance of any duty or trust under said trust or said declaration thereof or to qualify as a trustee or trustees of said trust. Each such appointee in this instrument hereinbefore named shall have the right at any time to resign as trustee of said trust.

In Witness Whereof, said George S. Gaylord has hereunto set his hand and seal this 1st day of December, 1941.

Executed in Quadruplicate.

(Seal)

GEORGE S. GAYLORD

(George S. Gaylord)

(Testimony of George S. Gaylord.)

Respondent's Exhibit L—(Continued)

State of California

County of Los Angeles—ss.

On this 13th day of December, A. D. 1941, before me, J. F. Kinman, a notary public in and for said County and State, personally appeared George S. Gaylord, known to me to be the person whose name is subscribed to the within and foregoing instrument, and acknowledged to me that he executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

(Seal) J. F. KINMAN

Notary Public in and for said County and State.

State of California

County of Los Angeles—ss.

Before me, the undersigned authority, a notary public in and for the County of Los Angeles, State of California, on this day personally appeared George S. Gaylord, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purpose and consideration therein expressed.

Given under my hand and official seal this 13th day of December, 1941.

(Seal) J. F. KINMAN

Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires August 14, 1942.

(Testimony of George S. Gaylord.)

Respondent's Exhibit L—(Continued)

#1110. Copy of original recorded at request of Attorney, Dec. 13, 1941, 11:57 a.m. Copyist #39 Compared, Mame B. Beatty, County Recorder. By A. Rand (211) Deputy. \$1.90-14-L.

State of California

County of Los Angeles—ss.

I hereby certify the foregoing to be a full, true and correct copy of the instrument appearing recorded in Book No. 19038 of Official Records, Page 20, Records of Los Angeles County, and that I have carefully compared the same with the original record.

In Witness Whereof, I have hereunto set my hand and affixed my Official Seal, this 10th day of March, 1943.

(Seal)

MAME B. BEATTY

County Recorder

By W. D. CLEAVER,

Deputy

(Original)

RESIGNATION OF GEORGE S. GAYLORD
AND GERTRUDE H. GAYLORD AS
TRUSTEES

Know All Men By These Presents:

Whereas in and by that certain declaration of trust dated the 7th day of November, 1935, the undersigned George S. Gaylord and Gertrude H.

(Testimony of George S. Gaylord.)

Respondent's Exhibit I.—(Continued)

Gaylord, his wife (who, though more than one, are also in said declaration of trust called "trustee") do thereby certify and declare that they hold and shall and will hold the following described personal property, to-wit, seven thousand (7000) shares of the common capital stock of Marathon Paper Mills Company, a Wisconsin corporation, of the par value of \$25.00 per share, and any and all proceeds thereof. In Trust. Nevertheless, for the uses and purposes and upon the terms and conditions set forth in said declaration of trust, reference being hereby made to said declaration of trust for further particulars thereof, and which said trust has at all times been and is irrevocable, and which said declaration of trust was executed in quadruplicate by said George G. Gaylord and Gertrude H. Gaylord, the trustors and trustees therein named, who under date of December 11, 1935, acknowledged before J. C. Humphreys, a notary public in and for the County of Los Angeles, State of California, their, the said George S. Gaylord and Gertrude H. Gaylord's, execution of said declaration of trust, and which said declaration of trust was recorded on September 23, 1937, in the office of the County Recorder of Los Angeles County, California, in Book 15288 at Page 94 of Official Records of said County; and

Whereas, in and by Article XI of said declaration of trust it is provided, among other things, that said George S. Gaylord and Gertrude H. Gay-

(Testimony of George S. Gaylord.)

Respondent's Exhibit L—(Continued)

lord, his wife, or either of them, shall have the right at any time to resign as trustee of said trust by signing an instrument in writing declaring that they, he or she (as the case may be) so resigns as the trustee of said trust and acknowledging the execution of such instrument before a notary public or other officer authorized to take acknowledgments, which acknowledgment shall be certified so as to entitle the same to be recorded, and by recording such instrument in the office of the County Recorder of the County of Los Angeles, State of California, and that said instrument in writing of such resignation shall be effective upon and as of the time of such recordation; and

Whereas, said George S. Gaylord and Gertrude H. Gaylord desire and intend in and by this instrument to so resign as the trustee of said trust and as trustees of said trust:

Now, Therefore, said George S. Gaylord and Gertrude H. Gaylord do and each of them does hereby resign as the trustee of said trust and as trustees of said trust and do hereby declare that they and each of them so resign as the trustee of said trust and that it is the desire and intention of them and each of them that such resignation be effective immediately.

In Witness Whereof, said undersigned have hereunto set their hands and seals this 2nd day of December, 1941.

(Testimony of George S. Gaylord.)

Respondent's Exhibit L—(Continued)

Executed in Quadruplicate.

(Seal) GEORGE S. GAYLORD

(Seal) GERTRUDE H. GAYLORD

State of California

County of Los Angeles—ss.

I hereby certify the foregoing to be a full, true and correct copy of the instrument appearing recorded in Book No. 19039 of Official Records, Page 28, Records of Los Angeles County, and that I have carefully compared the same with the original record.

In Witness Whereof, I have hereunto set my hand and affixed my Official Seal this 10th day of March, 1943.

MAME B. BEATTY,

County Recorder

By W. D. CLEAVER,

Deputy

State of California,

County of Los Angeles—ss.

On this 13th day of December, 1941, before me, J. F. Kinman, a notary public in and for said County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared George S. Gaylord and Gertrude H. Gaylord, his wife, personally known to me to be the persons whose names are subscribed to the within and foregoing instrument, and acknowledged to me that they executed the same.

(Testimony of George S. Gaylord.)

Respondent's Exhibit L—(Continued)

In Witness Whereof, I have hereunto set my hand and affixed my official seal in said county the day and year in this certificate first above written.

(Seal)

J. F. KINMAN

Notary Public in and for the County of Los Angeles, State of California.

State of California

County of Los Angeles—ss.

Before Me, the undersigned authority, a notary public in and for Los Angeles County, California, on this day, personally appeared George S. Gaylord and Gertrude H. Gaylord, his wife, both known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they each executed the same for the purposes and consideration therein expressed, and the said Gertrude H. Gaylord, wife of the said George S. Gaylord, having been examined by me privily and apart from her husband and having the same fully explained to her, she, the said Gertrude H. Gaylord, acknowledged such instrument to be her act and deed, and she declared that she had willingly signed the same for the purposes and consideration therein expressed, and that she did not wish to retract it.

(Testimony of George S. Gaylord.)

Respondent's Exhibit L—(Continued)

Given Under My Hand and Seal of Office, this
13th day of December, 1941.

(Seal) J. F. KINMAN

Notary Public in and for Los Angeles County, California.

My Commission Expires August 14, 1942.

#1256—Copy of original recorded at request of
Dockweiler & Dockweiler, Dec. 17, 1941, 2:33 p.m.
Copyist #83 Compared, Mame B. Beatty, County
Recorder. By A. C. Dutton (218) Deputy. \$1.40-
9-Mc.

(Original)

ACCEPTANCE BY MARGARET GAYLORD
RUPPEL AND EUGENE L. BRUCE OF
APPOINTMENT AS SUCCESSOR TRUS-
TEES

Know All Men By These Presents:

Whereas in and by that certain declaration of
trust dated the 7th day of November, 1935, George
S. Gaylord and Gertrude H. Gaylord, his wife
(who, though more than one, are also in said dec-
laration of trust called "trustee") do thereby
certify and declare that they hold and shall and
will hold the following described personal property,
to-wit, seven thousand (7000) shares of the com-
mon capital stock of Marathon Paper Mills Com-
pany, a Wisconsin corporation, of the par value
of \$25.00 per share, and any and all proceeds there-
of, In Trust, Nevertheless, for the uses and pur-

(Testimony of George S. Gaylord.)

Respondent's Exhibit L—(Continued)

poses and upon the terms and conditions set forth in said declaration of trust, reference being hereby made to said declaration of trust for further particulars thereof, and which said trust has at all times been and is irrevocable, and which said declaration of trust was executed in quadruplicate by said George S. Gaylord and Gertrude H. Gaylord, the trustors and trustees therein named, who under date of December 11, 1935, acknowledged before J. C. Humphreys, a notary public in and for the County of Los Angeles, State of California, their, the said George S. Gaylord and Gertrude H. Gaylord's, execution of said declaration of trust, and which said declaration of trust was recorded on September 23, 1937, in the office of the County Recorder of Los Angeles County, California, in Book 15288 at Page 94 of Official Records of said County; and

Whereas, in and by article XI of said declaration of trust it is provided, among other things, that said George S. Gaylord and Gertrude H. Gaylord, his wife, or either of them, shall have the right at any time to resign as trustee of said trust by signing an instrument in writing declaring that they or he or she (as the case may be) so resigns as the trustee of said trust and acknowledging the execution of such instrument before a notary public or other officer authorized to take acknowledgments, which acknowledgment shall be certified so

(Testimony of George S. Gaylord.)

Respondent's Exhibit L—(Continued)

as to entitle the same to be recorded, and by recording such instrument in the office of the County Recorder of the County of Los Angeles, State of California, and that said instrument in writing of such resignation shall be effective upon and as of the time of such recordation, and that said George S. Gaylord shall have the right by an instrument in writing signed by him and acknowledged by him before a notary public or other officer authorized to take acknowledgments, which acknowledgment shall be certified so as to entitle the same to be recorded, and recorded in the office of said County Recorder of the County of Los Angeles, State of California, to appoint the successor or successors as the trustee (whether one or more) of the trust created and provided for in said declaration of trust in the event that neither of the two original trustees of said trust, viz., said George S. Gaylord and Gertrude H. Gaylord, is acting as the trustee of said trust; and

Whereas, said George S. Gaylord did by an instrument in writing dated the 1st day of December, 1941, signed by him and acknowledged by him on the 13th day of December, 1941, before J. F. Kinman, a notary public in and for said County and State, and certified by said notary so as to entitle the same to be recorded, appoint his (the said George S. Gaylord's) daughter Margaret Gaylord Ruppel and his son-in-law Eugene L. Bruce, who is the husband of said George S. Gaylord's daughter

(Testimony of George S. Gaylord.)

Respondent's Exhibit L—(Continued)

Gertrude Gaylord Bruce, and the survivor of said Margaret Gaylord Ruppel and said Eugene L. Bruce, trustees or trustee (as the case may be) of said trust in the event that neither of said original trustees George S. Gaylord and Gertrude H. Gaylord is acting as the trustee of said trust, which said instrument is entitled Instrument of Appointment by George S. Gaylord of Successor Trustees and was recorded in the office of said County Recorder on the 13th day of December, 1941, and to which said instrument reference is hereby made for further particulars thereof; and

Whereas, by an instrument in writing entitled Resignation of George S. Gaylord and Gertrude H. Gaylord as Trustees, dated the 2nd day of December, 1941, and signed by said George S. Gaylord and Gertrude H. Gaylord, his wife, said George S. Gaylord and Gertrude H. Gaylord and each of them did thereby resign as the trustee of said trust and did thereby declare that they and each of them so resigned as the trustee of said trust and that it was the desire and intention of them and each of them that such resignation be effective immediately, which said instrument of resignation was acknowledged by said George S. Gaylord and Gertrude H. Gaylord on the 13th day of December, 1941, before J. F. Kinman, a notary public in and for said County and State, and which said acknowledgment was certified so as to entitle said instrument to be recorded, and which said instrument was

(Testimony of George S. Gaylord.)

Respondent's Exhibit L—(Continued)

on the 17th day of December, 1941, recorded in said office of said County Recorder and to which said instrument reference is hereby made for further particulars thereof;

Now, Therefore, the undersigned and hereinbefore named Margaret Gaylord Ruppel and Eugene L. Bruce have and each of them has accepted and do and each of them does hereby accept and declare her and his (as the case may be) acceptance of said appointment as trustee of said trust and said undersigned do and each of them does agree and consent to act and serve as trustees or trustee of said trust.

In Witness Whereof, said undersigned have hereunto set their hands and seals this 13th day of December, 1941.

Executed in Quadruplicate.

(Seal) MARGARET GAYLORD
 RUPPEL

(Seal) EUGENE L. BRUCE

State of California

County of Los Angeles—ss.

On this 30th day of December, A. D. 1941, before me, J. F. Kinman, a notary public in and for said County and State, personally appeared Margaret Gaylord Ruppel, known to me to be the person whose name is subscribed to the within and foregoing instrument, and acknowledged to me that she executed the same.

(Testimony of George S. Gaylord.)

Respondent's Exhibit L—(Continued)

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

(Seal)

J. F. KINMAN,

Notary Public in and for said County and State.

State of California,

County of Los Angeles—ss.

On this 30th day of December, A.D. 1941, before me, J. F. Kinman, a notary public in and for said County and State, personally appeared Eugene L. Bruce, known to me to be the person whose name is subscribed to the within and foregoing instrument, and acknowledged to me that he executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

(Seal)

J. F. KINMAN

Notary Public in and for said County and State.

#1458 Copy of original recorded at request of Attorney, Dec. 31, 1941, 12:34 p.m. Copyist #101 Compared, Mame B. Beatty, County Recorder, By J. Kurrasch (234) Deputy. \$2.00-14-P.

(Testimony of George S. Gaylord.)

Respondent's Exhibit L—(Continued)

State of California,

County of Los Angeles—ss.

I hereby certify the foregoing to be a full, true and correct copy of the instrument appearing recorded in Book No. 19068 of Official Records, Page 40, Records of Los Angeles County, and that I have carefully compared the same with the original record.

In Witness Whereof, I have hereunto set my hand and affixed my Official Seal, this 10th day of March, 1943.

MAME B. BEATTY,

County Recorder

By W. D. CLEAVER,

Deputy

50

Form 1000
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICEUNITED STATES
INFORMATION RETURN FOR
CALENDAR YEAR 1939

INSTRUCTIONS TO PAYORS

Prepare one of these forms for each payee in accordance with the instructions on return Form 1000.

Do not include payments to nonresident aliens reported on Form 1042.

Forward with return Form 1000 so as to reach the Commissioner of Internal Revenue, Returns Distribution Section, Washington, D. C., on or before February 15, 1940.

To: George S. & Gertrude H. Gaylord, Trustees
Whom: LIFE INSURANCE
Paid: Pasadena, Calif.
(Full name and home address)

KIND AND AMOUNT OF INCOME PAID

Salaries, Wages, Fees, Commissions, Dividends (If single \$1,000 or more, if married \$2,000 or more)	Interest on Notes, Bonds, etc.	Rents and Royalties	Other Fixed or Determinable Income	Provision Income (\$1,000 or more)	Dividend Income (\$100 or more)
(\$1,000 or more aggregate amount of above items)					
\$	\$	\$ 1,015.85	\$	\$	\$
<input type="checkbox"/> SINGLE					
<input type="checkbox"/> MARRIED					

By
Whom
Paid
(Name and address)

Form 1000
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICEUNITED STATES
INFORMATION RETURN FOR
CALENDAR YEAR 1939

INSTRUCTIONS TO PAYORS

Prepare one of these forms for each payee in accordance with the instructions on return Form 1000.

Do not include payments to nonresident aliens reported on Form 1042.

Forward with return Form 1000 so as to reach the Commissioner of Internal Revenue, Returns Distribution Section, Washington, D. C., on or before February 15, 1940.

To: George S. Gaylord and Gertrude H. Gaylord,
Whom: 639 Rosemont Avenue,
Paid: Pasadena, California
(Full name and home address)

KIND AND AMOUNT OF INCOME PAID

Salaries, Wages, Fees, Commissions, Dividends (If single \$1,000 or more, if married \$2,000 or more)	Interest on Notes, Bonds, etc.	Rents and Royalties	Other Fixed or Determinable Income	Provision Income (\$1,000 or more)	Dividend Income (\$100 or more)
(\$1,000 or more aggregate amount of above items)					
\$	\$	\$ 1875.00	\$	\$	\$
<input type="checkbox"/> SINGLE					
<input type="checkbox"/> MARRIED					

By
Whom
Paid
(Name and address)

C. R. ANTHONY CO.
Philadelphia City, Ohio.

(Endorsed) T.C.U.S.A. Filed Apr. 2, 1944.

(Testimony of George S. Gaylord.)

Mr. Coon: Now, there is some information, as I have explained to your Honor and opposing counsel, in the returns of the two daughters. This is the return for Margaret G. Ruppel for 1936.

The Judge: That will be Exhibit M.

(The said 1936 return of Margaret G. Ruppel, so offered and received in evidence was marked Respondent's Exhibit M, and made a part of this record.)

(Testimony of George S. Gaylord.)

Mr. Coon: Margaret G. Ruppel's return for 1937. [351]

The Judge: Exhibit N.

(The said 1937 return of Margaret G. Ruppel, so offered and received in evidence was marked Respondent's Exhibit N, and made a part of this record.)

1937 UNITED STATES INDIVIDUAL INCOME TAX RETURN 1937

Page 1

Do not write in this space
(Auditor's Stamp)

Treasury Department (FORM 1040) Internal Revenue Service

FOR NET INCOMES FROM SALARIES, WAGES, INTEREST, AND
DIVIDENDS OF MORE THAN \$5,000, AND INCOMES FROM
OTHER SOURCES REGARDLESS OF AMOUNTS

For Calendar Year 1937 or Fiscal Year
beginning , 1937, and ended , 1938

File this return not later than the 15th day of the third month following the close of the taxable year

PRINT NAME AND ADDRESS PLAINLY (See Instructions B)

MARGARET C. KUPPEL

(Name) (Last Initials and First Name)

611 1st St.

(Street and number, or rural route)

Reference

INCOME

1. Salaries and other compensation for personal services (from Schedule A)
2. Dividends from domestic and foreign corporations
3. Interest on bank deposits, notes, mortgages, etc.
4. Interest on corporation bonds
5. Taxable interest on Government obligations, etc. (from Schedule B)
6. Income (or loss) from partnerships, syndicates, pools, etc. (furnish name and address)

7. Income from fiduciaries (furnish name and address)

8. Rents and royalties (from Schedule C)

9. Income (or loss) from business or profession (from Schedule D)

10. Gain (or loss) from sale or exchange of property (from Schedule E)

11. Other income (state nature; use separate schedule if necessary)

12. Total income in items 1 to 11 (enter nontaxable income in Schedule H)

DEDUCTIONS

13. Contributions (explain in Schedule G)

14. Interest (explain in Schedule G)

15. Taxes (explain in Schedule G)

16. Losses by fire, storm, etc. (explain in Schedule G)

17. Bad debts (explain in Schedule G)

18. Other deductions authorized by law (explain in Schedule G)

19. Total deductions in items 13 to 18

20. Net income (item 12 minus item 19)

COMPUTATION OF TAX

21. Net income (item 20 above)

22. Less: Personal exemption (from Schedule I)

23. Credit for dependents (from Schedule I)

24. Balance (surplus net income)

25. Less: Interest on Government obligations (item 5)

26. Earned income credit (from Schedule J)

27. Balance subject to normal tax

28. Normal tax (4% of item 27)

29. Surplus on item 24 (see Instruction 29)

30. Total tax (item 28 plus item 29)

31. Less: Income tax paid at source

32. Income tax paid to a foreign country or U. S. possession

33. Balance of tax (item 30 minus item 31 and 32)

NOTE.—One form marked "DUPLICATE COPY" must be filed with this original return (see instructions if duplicate copy is not filed)

(Testimony of George S. Gaylord.)

Respondent's Exhibit N—(Continued)

Schedule A.—INCOME FROM SALARIES AND OTHER
COMPENSATION FOR PERSONAL SERVICES.

(See Instruction 1)

1. Name and Address of Employer or Nature of Income	2. Amount
1½ husband—F. H. Ruppel Latisteel Corp., 3110 E. Foothill Blvd., Pasadena, Calif.	\$ 1,666.58

Schedule B.—INTEREST ON GOVERNMENT OBLIGA-
TIONS, ETC. (See Instruction 5)

[Followed by printed form not filled in]

Schedule C.—INCOME FROM RENTS AND ROYALTIES.

(See Instruction 8)

[Followed by printed form not filled in]

Schedule D.—PROFIT (OR LOSS) FROM BUSINESS OR
PROFESSION. (See Instruction 9)

[Followed by printed form not filled in]

Schedule E.—EXPLANATION OF DEDUCTION FOR DE-
PRECIATION CLAIMED IN SCHEDULES C. AND D

[Followed by printed form not filled in]

Schedule F.—GAINS AND LOSSES FROM SALES OR EX-
CHANGES OF PROPERTY. (See Instruction 10)

[Followed by printed form not filled in]

Schedule G.—EXPLANATION OF DEDUCTIONS
CLAIMED IN ITEMS 13, 14, 15, 16, 17 and 18

[Followed by printed form not filled in]

Schedule H.—NONTAXABLE INCOME OTHER THAN IN-
TEREST REPORTED IN SCHEDULE B. (See In-

struction 12)

[Followed by printed form not filled in]

Schedule I.—EXPLANATION OF CREDITS CLAIMED IN
ITEMS 22 AND 23. (See Instructions 22 and 23)

(a) Personal Exemption

Status	Number of Months During Year in Each Status	Credit Claimed
Married and living with hus- band or wife	12 mos.	\$2500

(Testimony of George S. Gaylord.)

Respondent's Exhibit N—(Continued)

Schedule J—COMPUTATION OF EARNED INCOME
CREDIT. (See Instruction 26)

[Followed by printed form not filled in]

QUESTIONS

1. State your principal occupation or profession: Housewife.
2. Check whether you are a citizen [☒] or resident alien [☐].
3. If you filed a return for the preceding year, to which Collector's office was it sent? Los Angeles.
4. Are items of income or deductions of both husband and wife included in this return? (See Instruction B): See Sch. A.
5. State name of husband or wife if a separate return was made, and the Collector's office to which it was sent? Frederick H. Ruppel, Los Angeles.
6. Check whether this return was prepared on the cash [☒] or accrual [☐] basis.
7. Did you at any time during your taxable year own directly or indirectly any stock of a domestic or foreign personal holding company? (Answer "yes" or "no"): No. If answer is "yes", attach schedule required by Instruction M.

AFFIDAVIT. (See Instruction F)

I/we swear (or affirm) that this return (including any accompanying schedules and statements) has been examined by me/us, and to the best of my knowledge and belief is a true, correct, and complete return, made in good faith, for the taxable year stated, pursuant to the Revenue Acts of 1936 and 1937 and the regulations issued thereunder.

MARGARET G. RUPPEL

(Signature) (See Instruction F)

Subscribed and sworn to by Margaret G. Ruppel before me this 3rd day of March, 1938.

ALICE F. JACKSON

(Signature and title of officer administering oath)

My Commission Expires Sept. 19, 1939.

[Endorsed]: T.C.U.S. Filed Apr. 2, 1943.

(Testimony of George S. Gaylord.)

Mr. Coon: Margaret G. Ruppel's return for 1938.

The Judge: Exhibit O.

(The said 1938 return of Margaret G. Ruppel, so offered and received in evidence was marked Respondent's Exhibit O, and made a part of this record.)

UNITED STATES

1938 INDIVIDUAL INCOME TAX RETURN 1938

FOR NET INCOMES OF MORE THAN \$1,000 FROM SALARIES, WAGES, DIVIDENDS, INTEREST, ANNUITIES, AND FOR INCOMES FROM OTHER SOURCES REGARDLESS OF AMOUNTS

For Calendar Year 1938

or fiscal year beginning 1938, and ended 1938

(Before Preparing This Return, Read the Instructions Carefully)

To be filed with the Collector of Internal Revenue for your district not later than the 15th day of the first month following the close of your taxable year

PRINT NAME AND ADDRESS PLAINLY (Give Instructions to)

MARGARET MARSHALL

(Print) (Give your name, including maiden and other, if a joint return)

2025 Hobles Avenue

(Street and number, or rural route)

Altadena Los Angeles California

(Post office)

(County)

(State)

Do not use these spaces

22497
05572
FEB 24 1939

Cash - Check - M.O.

Pay Person 42

462

INCOME

1. Salaries and other compensation for personal services. (From Schedule A)	\$ 2,500 02
2. Dividends	
3. Interest on bank deposits, notes, mortgages, etc.	
4. Interest on corporation bonds	
5. Taxable interest on Government obligations, etc. (From Schedule B)	
6. Income (or loss) from partnerships, syndicates, pools, etc. (other than capital gains or losses). (Forward name and address)	
7. Income from fiduciaries. (Forward name and address) George S. and Gertrude H. Gaylord Trust, Pasadena	1,707 18
8. Rents and royalties. (From Schedule C)	
9. Income (or loss) from business or profession. (From Schedule D)	
10. (a) Net short-term gain from sale or exchange of capital assets. (From Schedule F)	
(b) Net long-term gain (or loss) from sale or exchange of capital assets. (From Schedule F)	6,152 75
(c) Net gain (or loss) from sale or exchange of property other than capital assets. (From Schedule G)	
11. Other income (including income from annuities). (Check source; see separate schedule if necessary)	
12. Total income in items 1 to 11. (Enter non-exempt income in Schedule F)	\$10,449 95

DEDUCTIONS

13. Contributions paid. (Explain in Schedule H) Community Chest	\$ 20 00
14. Interest. (Explain in Schedule H)	
15. Taxes. (Explain in Schedule H)	414 22
16. Losses from fire, storm, shipwreck, or other casualty, or theft. (Explain in Schedule H) EVIDENCE 109	13
17. Bad debts. (Explain in Schedule H)	
18. Other deductions authorized by law. (Explain in Schedule H)	434 22
19. Total deductions in items 13 to 18	\$10,015 93
20. Net income (item 12 minus item 19)	

COMPUTATION OF TAX

21. Net income (item 20 above)	\$10,015 93
22. Less: Personal exemption. (From Schedule J-1) \$2500 00	
23. Credit for dependents. (From Schedule J-2) 400 00	2,900 00
24. Balance (surplus net income)	\$7,115 93
25. Less: Income on Government obligations, etc. (See Instructions 21) \$ 300 00	
26. Earned income credit. (From Schedule K-1 or K-2) 300 00	
27. Balance subject to normal tax	\$ 6,815 93
28. Normal tax (4% of item 27)	\$ 272 83
29. Surtax on item 24. (See Instructions 28)	136 79
30. Total (item 28 plus item 29)	\$ 408 62
31. Total tax (item 30, or if you had a net long-term capital gain or loss, enter line 16, Schedule F)	
32. Less: Income tax paid at source	
33. Income tax paid to a foreign country or U.S. possession (Attach Form 1041)	
34. Balance of tax (item 31 minus items 32 and 33)	\$ 408 62

NOTE—One form marked "DUPLICATE COPY" must be filed with this original return (It will be returned if duplicate copy is not filed)

9-1

(Testimony of George S. Gaylord.)

Respondent's Exhibit O—(Continued)

Schedule A.—INCOME RECEIVED FROM OTHERS CONSISTING OF SALARIES, WAGES, FEES, AND OTHER COMPENSATION FOR PERSONAL SERVICES. (See Instruction 1)

1. Name and address of employer and nature of income	2. Amount
1/2 husband's salary	\$2,500.02

Schedule B. INTEREST ON GOVERNMENT OBLIGATIONS, ETC. (See Instruction 5)

[Followed by printed form not filled in]

Schedule C.—INCOME FROM RENTS AND ROYALTIES.
(See Instruction 8)

[Followed by printed form not filled in]

Schedule D.—PROFIT (OR LOSS) FROM BUSINESS OR PROFESSION. (See Instruction 9)

[Followed by printed form not filled in]

Schedule E.—EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES C, D, F, AND G

[Followed by printed form not filled in]

Schedule F.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF CAPITAL ASSETS. (See Instruction 10)

Summary of Capital Net Gains or Losses

1. Classification	3. Net gain or loss to be taken into account from partnerships and "common trust funds" Gain	4. Total net gain or loss to be taken into account in cols. 2 and 3 of this summary Gain
2. Total net long-term capital gain or loss (enter as item 10(b), page 1, amount of gain or loss shown in col. 4)	\$6,152.75	\$6,152.75

COMPUTATION OF ALTERNATIVE TAX

(To be used only in the case of a net long-term capital gain or loss)

1. Net income (item 20, page 1)	\$10,015.73
2. (a) Net long-term capital gain (item 10 (b), page 1)	6,152.75

(Testimony of George S. Gaylord.)

Respondent's Exhibit O—(Continued)

Computation of Alternative Tax—(Continued)

3.	Ordinary net income (line 1 minus line 2 (a) or line 1 plus line 2 (b))	\$ 3,862.98
4.	Less: Personal exemption (From Schedule J-1)	\$2,500.00
5.	Credit for dependents. (From Schedule J-2)	400.00 2,900.00
6.	Balance (surtax net income).....	\$ 962.98
7.	Less: Interest on Government obligations, etc. (See Instruction 25) \$	
8.	Earned income credit. (From Schedule K-1 or K-2)	300.00 300.00
9.	Balance subject to normal tax	\$ 662.98
10.	Normal tax (4% of line 9).....	\$ 26.52
11.	Surtax on line 6 (See Instruction 29).....	
12.	Partial tax (line 10 plus line 11).....	\$ 26.52
13.	(a) 30% of net long-term capital gain (30% of line 2(a))	1,845.83
14.	Alternative tax (line 12, plus line 13(a) or line 12 minus line 13(b))	\$ 1,872.35
15.	Total normal tax and surtax (item 30, page 1)....	\$ 408.42
16.	Tax liability (if a net long-term capital gain, on line 2(a), enter line 14 or line 15, whichever is the lesser; if a net long-term capital loss, on line 2(b) enter line 14 or line 15, whichever is the greater). (Enter as item 31, page 1)	\$ 408.42

Schedule G.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF PROPERTY OTHER THAN CAPITAL ASSETS. (See Instruction 10)

[Followed by printed form not filled in]

Schedule M - EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 11, 16, 18, 19, AND 20

Schedule L - NONTAXABLE INCOME OTHER THAN INTEREST REPORTED IN SCHEDULE B (See Instructions 12)

Schedule J - EXPLANATION OF CREDITS CLAIMED IN ITEMS 22 AND 23 (See Instructions 22 and 23)

1. Personal Exemption

2. Credit for Dependents

Single, or married and not living with husband or wife
 Married and living with husband or wife
 Head of family (explain below)

Schedule K - COMPUTATION OF EARNED INCOME CREDIT (See Instructions 24)

(1) If your net income is \$3,000 or less, use only this part of schedule

(2) If your net income is more than \$3,000, use only this part of schedule

Net income (item 20, page 1)
 Earned income credit (10% of net income above)

Earned net income (not more than \$14,000)
 Net income (item 20, page 1)
 Earned income credit (10% of earned net income or net income, above, whichever amount is smaller, but do not enter less than \$400)

QUESTIONS

1. State your principal occupation or profession.
2. Check whether you are a citizen ☒ or a resident alien ☐.
3. If you filed a return for the preceding year, to which Collector's office was it sent?
4. Are items of income or deductions of both husband and wife included in this return? (See Instruction A)
5. State name of husband or wife if a separate return was made, personal exemption, if any, claimed thereon, and the Collector's

6. Check whether this return was prepared on the cash ☒ or accrual ☐ basis.
7. Did you at any time during your taxable year own directly or indirectly any stock of a foreign corporation or a personal holding company as defined by section 402? (Answer "yes" or "no.") (If answer is "yes," attach schedule required by Instruction M.)

AFFIDAVIT. (See Instruction F)

I/we swear (or affirm) that this return (including any accompanying schedules and statements) has been examined by me/us and to the best of my/our knowledge and belief is a true, correct, and complete return, made in good faith, for the taxable year stated, pursuant to the Revenue Act of 1938 and the regulations issued under authority thereof.

Subscribed and sworn to by Margaret J. Hughes
 before me this 21 day of January, 1939

Robert J. Hughes
 (Signature of taxpayer)

Notary Public
 A return made by or upon must be accompanied by power of attorney. (See Instruction F)

(If this is a joint return (not made by agent), it must be signed by both husband and wife. It must be sworn to before a proper officer by the person preparing the return. If neither or both prepare the return, it must be sworn to by both persons.)

AFFIDAVIT. (See Instruction F)

(If this return was prepared for you by some other person, the following affidavit must be executed)

I/we swear (or affirm) that I/we prepared this return for the person or persons named herein and that the return (including any accompanying schedules and statements) is a true, correct, and complete statement of all the information respecting the income tax liability of the person or persons for whom this return has been prepared of which I/we have any knowledge.

Subscribed and sworn to before me this 21 day of January, 1939



Dorothy J. Hughes
 (Signature of preparer)
 NOTARY PUBLIC

INVEST
 (Stamp)

(Testimony of George S. Gaylord.)

Mr. Coon: Margaret G. Ruppel's return for 1939.

The Judge: Exhibit P.

(The said 1939 return of Margaret G. Ruppel, so offered and received in evidence was marked Respondent's Exhibit P, and made a part of this record.)

FORM 1040
Treasury Department
Internal Revenue Service

UNITED STATES
INDIVIDUAL INCOME TAX RETURN 1939

Page 1

FOR NET INCOMES OF MORE THAN \$1,000 FROM SALARIES, WAGES,
DIVIDENDS, INTEREST, ANNUITIES, AND FOR INCOMES FROM
OTHER SOURCES REGARDLESS OF AMOUNTS

For Calendar Year 1939

or fiscal year beginning _____, 1939, and ended _____, 1939

To be filed with the Collector of Internal Revenue for your district not later than the 15th day of the third month following the close of your taxable year

PRINT NAME AND ADDRESS PLAINLY. (Show Instructions C)

MARGARET S. THOMAS

2225 BOLLES AVENUE

Alhambra, Los Angeles, California

(Do not use this space)
No. 887450
Date MAR 16 1940
City - Los Angeles
(Collector's Stamp)

MAR 16 1940
City - Los Angeles

704.4

INCOME

1. Salaries and other compensation for personal services. (From Schedule K)	\$ 2,500.00
2. Dividends	
3. Interest on bank deposits, notes, mortgages, etc.	
4. Interest on other investments	
5. Taxable interest on Government obligations, etc. (From Schedule K)	
6. Income (or loss) from partnerships, syndicates, pools, etc. (other than capital gains or losses). (From Schedule K)	
7. Income from fiduciaries. (From Schedule K)	
George S. and Gertrude H. Gaylord Trust, Pasadena	11,252.70
8. Pensions and annuities. (From Schedule K)	
9. Income (or loss) from business or profession. (From Schedule K)	
10. (a) Net short-term gain from sale or exchange of capital assets. (From Schedule F)	
(b) Net long-term gain (or loss) from sale or exchange of capital assets. (From Schedule F)	
(c) Net gain (or loss) from sale or exchange of property other than capital assets. (From Schedule G)	
11. Other income (including income from annuities) (Show source)	
12. Total income in items 1 to 11. (Show amounts in item 12)	\$ 13,752.70

DEDUCTIONS

13. Contributions paid. (Schedule K)		THE TAX COURT OF THE U. S.	\$ 36.00
14. Interest. (Schedule K)		INT. & DIVIDENDS	
15. Taxes. (Schedule K)		ADMITTED - 1939	272.51
16. Losses from fire, storm, shipwreck, or other casualty, or theft. (Supplement 1943)			
17. Real estate taxes. (Schedule K)			
18. Other deductions authorized by law. (Schedule K)		RESPONDENT'S	
19. Total deductions in items 13 to 18.			683.42
20. Net income (from 12 minus item 19).			\$ 13,069.28

COMPUTATION OF TAX

21. Net income (from 20 above)	\$ 13,069.28	26. Normal tax (4% of item 21)	\$ 522.77
22. Less: Personal exemption. (From Schedule J-K)	\$ 2500.00	27. Surplus on item 26. (See Instructions B)	\$ 510.65
23. Credit for dependents. (From Schedule J-K)	\$ 400.00	28. Total (from 26 plus item 27)	\$ 706.42
24. Balance (minus net income)	\$ 10,169.28	29. Total tax (from 28, or if you had a net long-term capital gain or loss, enter line 16, Schedule F)	
25. Less: Income tax paid at source on the income in items 1-6	\$ 300.00	30. Less: Income tax paid at source	
26. Excess income credit. (From Schedule J-K)	\$ 300.00	31. Balance of tax (from 29 minus item 30)	\$ 706.42
27. Balance subject to normal tax	\$ 9,869.28		

NOTE—Our form marked "DUPLICATE COPY" must be filed with this original return (28 will be returned if duplicate copy is not filed)

P.1

(Testimony of George S. Gaylord.)

Respondent's Exhibit P—(Continued)

Schedule A.—INCOME RECEIVED FROM OTHERS CONSISTING OF SALARIES, WAGES, FEES, AND OTHER COMPENSATION FOR PERSONAL SERVICES. (See Instruction 1)

1. Name and address of employer and nature of income	2. Amount	4. Amount
$\frac{1}{2}$ of husband's salary		
Latisteel Corp.	\$2,500.00	_____
Total of column 2 minus total of column 4 (enter as item 1, page 1).....		\$2,500.00

Schedule B.—INTEREST ON GOVERNMENT OBLIGATIONS, ETC. (See Instruction G)

[Followed by printed form not filled in]

Schedule C.—INCOME FROM RENTS AND ROYALTIES.
(See Instruction 8)

[Followed by printed form not filled in]

Schedule D.—PROFIT (OR LOSS) FROM BUSINESS OR PROFESSION. (See Instruction 9)

[Followed by printed form not filled in]

Schedule E.—EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES C, D, F and G

[Followed by printed form not filled in]

Schedule F.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF CAPITAL ASSETS. (See Instruction 10)

[Followed by printed form not filled in]

Schedule G.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF PROPERTY OTHER THAN CAPITAL ASSETS. (See Instruction 10)

[Followed by printed form not filled in]

Schedule M.—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 13, 14, 15, 16, 17, AND 18

Page 4

1. Item No.	2. Explanation	3. Amount	4. Item No.	5. Explanation (Continued)	6. Amount
13	Junior League Club Community Chest	\$ 26 00 10 00 36 00	15	Personal property Real Estate State income	\$ 215 01 309 12 125 92 650 05

Schedule I.—NONTAXABLE INCOME OTHER THAN INTEREST REPORTED IN SCHEDULE B. (See Instruction C)

1. Source of income	2. Nature of income	3. Amount
		\$

Schedule J.—EXPLANATION OF CREDITS CLAIMED IN ITEMS 22 AND 23. (See Instructions 22 and 23)

(1) Personal Exemption			(2) Credits for Dependents		
Name	Number of months during the year in which status	Credits claimed	Name of dependent and relationship	Number of months during the year Under 18 years old Over 18 years old	Credits claimed
Single, or married and not living with husband or wife					
Married and living with husband or wife	12	2,500 00	Daughter - Barbara	12	1,200 00
Head of family (explain below)					
			Reason for support if over 18 years old		

Schedule K.—COMPUTATION OF EARNED INCOME CREDIT. (See Instruction 26)

(1) If your net income is \$5,000 or less, use only this part of schedule		(2) If your net income is more than \$5,000, use only this part of schedule	
Net income (item 20, page 1)	\$	Earned net income (not more than \$14,000)	\$ 2,500 00
Earned income credit (10% of net income, above)		Net income (item 20, page 1)	2,045 29
		Earned income credit (10% of earned net income or 10% of net income, above, whichever amount is smaller, but do not enter less than \$300)	302 00

QUESTIONS

1. State your principal occupation or profession. investments
2. Check whether you are a citizen ☒ or a resident alien ☐.
3. If you filed a return for the preceding year, to which Collector's office was it sent? LOS ANGELES
4. Are items of income or deductions of both husband and wife included in this return? no
5. State (a) Name of husband or wife if separate return was made no
(b) Personal exemption, if any, claimed thereon none
(c) Collector's office to which it was sent LOS ANGELES
6. Check whether this return was prepared on the cash ☒ or accrual ☐ basis.
7. Did you at any time during your taxable year own directly or indirectly any stock of a foreign corporation or a personal holding company as defined by section 501? (Answer "yes" or "no") no (If answer is "yes," attach statement required by Instruction J.)

AFFIDAVIT. (See Instruction E)

I/we swear (or affirm) that this return (including any accompanying schedules and statements) has been examined by me/us, and to the best of my/our knowledge and belief is a true, correct, and complete return, made in good faith, for the taxable year stated, pursuant to the Internal Revenue Code, as amended, and the regulations issued under authority thereof.

Subscribed and sworn to by Margaret Skippel

Margaret Skippel
(Signature) (See Instruction E)

before me this 11th day of June, 1946

NOTARY PUBLIC

A return made by an agent must be accompanied by power of attorney. (See Instruction E.)

My Commission Expires Jun 12, 1951

AFFIDAVIT. (See Instruction E)

(If this return was prepared for you by some other person, the following affidavit must be recited)

I/we swear (or affirm) that I/we prepared this return for the person or persons named herein and that the return (including any accompanying schedules and statements) is a true, correct, and complete statement of all the information respecting the income tax liability of the person or persons for whom this return has been prepared of which I/we have any knowledge.

Subscribed and sworn to before me this 16 day

of June, 1946



(Signature of person preparing the return)

(Signature of person preparing the return)

JAMES W. WINTER & CO.

CPA'S & ACCOUNTANTS

and for the County of Los Angeles, State of California

My Commission Expires June 12, 1951

(Testimony of George S. Gaylord.)

Mr. Coon: Now, your Honor please, the corresponding returns for Gertrude Gaylord Bruce. Her return, Gertrude Gaylord, for 1936.

The Judge: Exhibit Q.

(The said 1936 return of Gertrude Gaylord, so offered and received in evidence was marked Respondent's Exhibit Q, and made a part of this record.)

11-1-1934 FIELDX

INDIVIDUAL INCOME TAX RETURN

FOR THE INCOME FROM JANUARY 1 TO DECEMBER 31, 1933
AND FROM THE INCOME FROM JANUARY 1 TO DECEMBER 31, 1934

For Calendar Year 1933

Full name of taxpayer: **GERTRUDE GRAYLORD**

Address: **139 Belmont Ave. Chicago, Ill.**

Occupation: **Practical Nurse**

Married: **Yes**

Number of dependents: **0**

Number of exemptions: **0**

Number of allowances: **0**

Number of deductions: **0**

Number of credits: **0**

Number of payments: **0**

Number of refunds: **0**

Number of overpayments: **0**

Number of underpayments: **0**

Number of deficiencies: **0**

Number of penalties: **0**

Number of interest: **0**

Number of additions: **0**

Number of subtractions: **0**

Number of divisions: **0**

Number of multiplications: **0**

Number of powers: **0**

Number of roots: **0**

Number of logarithms: **0**

Number of trigonometric functions: **0**

Number of inverse trigonometric functions: **0**

Number of hyperbolic functions: **0**

Number of inverse hyperbolic functions: **0**

Number of Bessel functions: **0**

Number of Legendre functions: **0**

Number of Chebyshev functions: **0**

Number of Hermite functions: **0**

Number of Laguerre functions: **0**

Number of Stirling functions: **0**

Number of Bernoulli functions: **0**

Number of Euler functions: **0**

Number of Riemann zeta functions: **0**

Number of Dirichlet L-functions: **0**

Number of Dedekind sums: **0**

Number of Kronecker symbols: **0**

Number of Jacobi symbols: **0**

Number of Legendre symbols: **0**

Number of quadratic residues: **0**

1. Gross Income: **15.14**

2. Less: Exemptions: **0**

3. Net Income: **15.14**

4. Less: Deductions: **0**

5. Taxable Income: **15.14**

6. Less: Credits: **0**

7. Tax: **0**

8. Less: Payments: **0**

9. Refund: **0**

10. Total: **15.14**

11. Less: Additions: **0**

12. Total: **15.14**

13. Less: Subtractions: **0**

14. Total: **15.14**

15. Less: Divisions: **0**

16. Total: **15.14**

17. Less: Multiplications: **0**

18. Total: **15.14**

19. Less: Powers: **0**

20. Total: **15.14**

21. Less: Roots: **0**

22. Total: **15.14**

23. Less: Logarithms: **0**

24. Total: **15.14**

25. Less: Trigonometric functions: **0**

26. Total: **15.14**

27. Less: Inverse trigonometric functions: **0**

28. Total: **15.14**

29. Less: Hyperbolic functions: **0**

30. Total: **15.14**

31. Less: Inverse hyperbolic functions: **0**

32. Total: **15.14**

33. Less: Bessel functions: **0**

34. Total: **15.14**

35. Less: Legendre functions: **0**

36. Total: **15.14**

37. Less: Chebyshev functions: **0**

38. Total: **15.14**

39. Less: Hermite functions: **0**

40. Total: **15.14**

41. Less: Laguerre functions: **0**

42. Total: **15.14**

43. Less: Stirling functions: **0**

44. Total: **15.14**

45. Less: Bernoulli functions: **0**

46. Total: **15.14**

47. Less: Additions: **0**

48. Total: **15.14**

49. Less: Subtractions: **0**

50. Total: **15.14**

51. Less: Divisions: **0**

52. Total: **15.14**

53. Less: Multiplications: **0**

54. Total: **15.14**

55. Less: Powers: **0**

56. Total: **15.14**

57. Less: Roots: **0**

58. Total: **15.14**

59. Less: Logarithms: **0**

60. Total: **15.14**

61. Less: Trigonometric functions: **0**

62. Total: **15.14**

63. Less: Inverse trigonometric functions: **0**

64. Total: **15.14**

65. Less: Hyperbolic functions: **0**

66. Total: **15.14**

67. Less: Inverse hyperbolic functions: **0**

68. Total: **15.14**

69. Less: Bessel functions: **0**

70. Total: **15.14**

71. Less: Legendre functions: **0**

72. Total: **15.14**

73. Less: Chebyshev functions: **0**

74. Total: **15.14**

75. Less: Hermite functions: **0**

76. Total: **15.14**

77. Less: Laguerre functions: **0**

78. Total: **15.14**

79. Less: Stirling functions: **0**

80. Total: **15.14**

81. Less: Bernoulli functions: **0**

82. Total: **15.14**

83. Less: Dirichlet L-functions: **0**

84. Total: **15.14**

85. Less: Dedekind sums: **0**

86. Total: **15.14**

87. Less: Kronecker symbols: **0**

88. Total: **15.14**

89. Less: Jacobi symbols: **0**

90. Total: **15.14**

91. Less: Legendre symbols: **0**

92. Total: **15.14**

93. Less: Quadratic residues: **0**

94. Total: **15.14**

95. Less: Additions: **0**

96. Total: **15.14**

97. Less: Subtractions: **0**

98. Total: **15.14**

99. Less: Divisions: **0**

100. Total: **15.14**

101. Less: Multiplications: **0**

102. Total: **15.14**

103. Less: Powers: **0**

104. Total: **15.14**

105. Less: Roots: **0**

106. Total: **15.14**

107. Less: Logarithms: **0**

108. Total: **15.14**

109. Less: Trigonometric functions: **0**

110. Total: **15.14**

111. Less: Inverse trigonometric functions: **0**

112. Total: **15.14**

113. Less: Hyperbolic functions: **0**

114. Total: **15.14**

115. Less: Inverse hyperbolic functions: **0**

116. Total: **15.14**

117. Less: Bessel functions: **0**

118. Total: **15.14**

119. Less: Legendre functions: **0**

120. Total: **15.14**

121. Less: Chebyshev functions: **0**

122. Total: **15.14**

123. Less: Hermite functions: **0**

124. Total: **15.14**

125. Less: Laguerre functions: **0**

126. Total: **15.14**

127. Less: Stirling functions: **0**

128. Total: **15.14**

129. Less: Bernoulli functions: **0**

130. Total: **15.14**

131. Less: Dirichlet L-functions: **0**

132. Total: **15.14**

133. Less: Dedekind sums: **0**

134. Total: **15.14**

135. Less: Kronecker symbols: **0**

136. Total: **15.14**

137. Less: Jacobi symbols: **0**

138. Total: **15.14**

139. Less: Legendre symbols: **0**

140. Total: **15.14**

141. Less: Quadratic residues: **0**

142. Total: **15.14**

143. Less: Additions: **0**

144. Total: **15.14**

145. Less: Subtractions: **0**

146. Total: **15.14**

147. Less: Divisions: **0**

148. Total: **15.14**

149. Less: Multiplications: **0**

150. Total: **15.14**

151. Less: Powers: **0**

152. Total: **15.14**

153. Less: Roots: **0**

154. Total: **15.14**

155. Less: Logarithms: **0**

156. Total: **15.14**

157. Less: Trigonometric functions: **0**

158. Total: **15.14**

159. Less: Inverse trigonometric functions: **0**

160. Total: **15.14**

161. Less: Hyperbolic functions: **0**

162. Total: **15.14**

163. Less: Inverse hyperbolic functions: **0**

164. Total: **15.14**

165. Less: Bessel functions: **0**

166. Total: **15.14**

167. Less: Legendre functions: **0**

168. Total: **15.14**

169. Less: Chebyshev functions: **0**

170. Total: **15.14**

171. Less: Hermite functions: **0**

172. Total: **15.14**

173. Less: Laguerre functions: **0**

174. Total: **15.14**

175. Less: Stirling functions: **0**

176. Total: **15.14**

177. Less: Bernoulli functions: **0**

178. Total: **15.14**

179. Less: Dirichlet L-functions: **0**

180. Total: **15.14**

181. Less: Dedekind sums: **0**

182. Total: **15.14**

183. Less: Kronecker symbols: **0**

184. Total: **15.14**

185. Less: Jacobi symbols: **0**

186. Total: **15.14**

187. Less: Legendre symbols: **0**

188. Total: **15.14**

189. Less

(Testimony of George S. Gaylord.)

Respondent's Exhibit Q—(Continued)

Schedule A.—PROFIT (OR LOSS) FROM BUSINESS OR PROFESSION. (See Instruction 2.)
[Followed by printed form not filled in]

Schedule B.—INCOME FROM RENTS AND ROYALTIES. (See Instruction 9.)

1. Kind of Property	2. Amount Received	3. Cost or Value as of Mar. 1, 1913, Which-ever Greater	4. Depreciation (Explain in table at foot of page)	5. Repairs	7. Net Profit (Enter as Item 6)
Stucco and frame	\$284.56	\$4,500	\$225	\$ 56.51	\$ 3.05

Schedules C, D, and F [Followed by printed forms not filled in]

EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES A AND B

1. Kind of Property (if buildings, state material of which constructed)	2. Date Acquired	3. Cost or Mar. 1, 1913, Value if Acquired Prior to That (Indicate basis)	5. Depreciation Allowed (or Allowable) in Prior Years	6. Remaining Cost or Other Basis to be Recovered	7. Life Used in Accumulating Depreciation	8. Estimated Remaining Life from Beginning of Year	9. Depreciation Allowable Table Year
Stucco & frame	1935	\$4,500	\$ 0	\$4,500	20 yr.	20 yr.	\$225.00

[Endorsed]: T.C.U.S. Filed Apr. 2, 1943.

(Testimony of George S. Gaylord.)

Mr. Coon: Gertrude Gaylord Bruce for 1937.

The Judge: Exhibit R.

(The said 1937 return of Gertrude Gaylord Bruce, so offered and received in evidence was marked Respondent's Exhibit R, and made a part of this record.)

1937 **UNITED STATES** 1937
INDIVIDUAL INCOME TAX RETURN

Do not write in this space (Auditor's Stamp)

TREASURY DEPARTMENT (FORM 1040) INTERNAL REVENUE SERVICE

FOR NET INCOMES FROM SALARIES, WAGES, INTEREST, AND DIVIDENDS OF MORE THAN \$5,000, AND INCOMES FROM OTHER SOURCES REGARDLESS OF AMOUNTS

For Calendar Year 1937 or Fiscal Year beginning _____, 1937, and ended _____, 1938

File this return not later than the 15th day of the third month following the close of the taxable year

PRINT NAME AND ADDRESS PLAINLY (See Instructions B)

GERTRUDE G. BRUCE
1466 Charlton Road
San Marino, Calif.

Do not use this space

Page 1

374

1937

Calif

INCOME

1. Salaries and other compensation for personal services (From Schedule A) 42277

2. Dividends from domestic and foreign corporations

3. Interest on bank deposits, notes, mortgages, etc.

4. Interest on corporation bonds

5. Taxable interest on Government obligations, etc. (From Schedule B)

7. Income (or loss) from partnerships, syndicates, pools, etc. (Furnish name and address)
San S. Jay Bond & Investment Co. 639 Rosemont Ave. Pasadena, Calif. 1524789

8. Income from fiduciaries (Furnish name and address)

8. Rents and royalties (From Schedule C)

9. Income (or loss) from business or profession (From Schedule D)

10. Gain (or loss) from sale or exchange of property (From Schedule F) APR 2 - 1943

11. Other income (state nature, use separate schedule if necessary)

12. Total income in items 1 to 11 (enter nontaxable income in Schedule B) 1590007

DEDUCTIONS

13. Contributions (explain in Schedule G)

14. Interest (explain in Schedule G)

15. Taxes (explain in Schedule G)

16. Losses by fire, storm, etc. (explain in Schedule G)

17. Bad debts (explain in Schedule G)

18. Other deductions authorized by law (explain in Schedule G)

19. Total deductions in items 13 to 18 53441

20. Net income (item 12 minus item 19) 1536066

COMPUTATION OF TAX

21. Net income (item 20 above)	1536066	28. Normal tax (6% of item 27)	52277
22. Less: Personal exemption (From Schedule I)	8187497	29. Surtax on item 28 (see Instructions 29)	55874
23. Credit for dependents (From Schedule I)	187497	30. Total tax (item 28 plus item 29)	808638
24. Balance (surtax not income)	81248569	31. Less: Income tax paid at source	
25. Less: Interest on Government obligations (item 5)	8	32. Income tax paid to a foreign country or U.S. possession	
26. Earned income credit (From Schedule J)	Zero		
27. Balance subject to normal tax	81248569	33. Balance of tax (from 30 minus items 31 and 32)	808638

NOTE—One form marked "DUPLICATE COPY" must be filed with this original return (88 will be assessed if duplicate copy is not filed)

(Testimony of George S. Gaylord.)

Respondent's Exhibit R—(Continued)

Schedule A.—INCOME FROM SALARIES AND OTHER COMPENSATION FOR PERSONAL SERVICES. (See Instruction 1)

[Followed by printed form not filled in]

Schedule B.—INTEREST ON GOVERNMENT OBLIGATIONS, ETC. (See Instruction 5)

[Followed by printed form not filled in]

Schedule C.—INCOME FROM RENTS AND ROYALTIES. (See Instruction 8)

1. Kind of Property	2. Amount	3. Depreciation (Explain in Schedule E)	4. Net Profit (Enter as Item 8, page 1)
Plaster & Wood House	\$ 454.41	\$ 225	\$ 239.41

Schedule D.—PROFIT (OR LOSS) FROM BUSINESS OR PROFESSION. (See Instruction 9)

[Followed by printed form not filled in]

Schedule E.—EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES C AND D

1. Kind of Property (if Buildings, State Material of Which Constructed)	2. Date Acquired	3. Cost or Other Basis	4. Depreciation Allowed (or Allowable) in Prior Years	5. Remaining Cost or Other Basis to be Recovered	6. Life Used in Accumulating Depreciation	7. Estimated Remaining Life From Beginning of Year	8. Depreciation allowable this year
Plaster & Wood House	1935	\$4,500	\$225	\$4,275	20 yr.	19 yr.	\$225

(Testimony of George S. Gaylord.)

Respondent's Exhibit R—(Continued)

Schedule F.—GAINS AND LOSSES FROM SALES OR EX-
CHANGES OF PROPERTY. (See Instruction 10)

[Followed by printed form not filled in]

Schedule G.—EXPLANATION OF DEDUCTIONS CLAIMED
IN ITEMS 13, 14, 15, 16, 17, AND 18

Calif State Income Tax....	399.19	Community Chest	5.00
Real Estate Tax	135.22		
	534.41		

Schedule H.—NONTAXABLE INCOME OTHER THAN IN-
TEREST REPORTED IN SCHEDULE B.

(See Instruction 12)

[Followed by printed form not filled in]

Schedule I.—EXPLANATION OF CREDITS CLAIMED IN
ITEMS 22 AND 23. (See Instructions 22 and 23)

(a) Personal Exemption		
Status	Number of Mos. During Year in Each Status	Credit Claimed
Single or married and not living with husband or wife.....	5 mos.	\$ 416.66
Married and living with hus- band or wife	7 mos.	1,458.31
Head of family (explain below)		\$1,874.97

Schedule J.—COMPUTATION OF EARNED INCOME
CREDIT. (See Instruction 26)

[Followed by printed form not filled in]

QUESTIONS

1. State your principal occupation or profession: Housewife.
2. Check whether you are a citizen [☒] or resident alien [☐].
3. If you filed a return form the preceding year, to which Col-
lector's office was it sent: Los Angeles.
4. Are items of income or deductions of both husband and wife
included in this return? (See Instruction B): No.

(Testimony of George S. Gaylord.)

Respondent's Exhibit R—(Continued)

Questions—(Continued)

5. State name of husband or wife if a separate return was made, and the Collector's office to which it was sent: Eugene L. Bruce, Los Angeles.
6. Check whether this return was prepared on the cash [☒] or accrual [☐] basis.
7. Did you at any time during your taxable year own directly or indirectly any stock of a domestic or foreign personal holding company? (Answer "yes" or "no"): No. If answer is "yes", attach schedule required by Instruction M.

AFFIDAVIT. (See Instruction F)

(If this return was prepared for you by some other person, the following affidavit must be executed)

I/we swear (or affirm) that I/we prepared this return for the person or persons named herein and that the return (including any accompanying schedules and statements) is a true, correct, and complete statement of all the information respecting the income-tax liability of the person or persons for whom this return has been prepared of which I/we have any knowledge.

GERTRUDE G. BRUCE

(Signature of person preparing the return)

Subscribed and sworn to before me this 3rd day of March, 1938.

(Seal)

ALICE F. JACKSON

(Signature and title of officer administering oath)

My Commission Expires Sept. 19, 1939.

[Endorsed]: T.C.U.S. Filed Apr. 2, 1943.

Mr. Coon: Gertrude Gaylord Bruce for 1938.

The Judge: Exhibit S. [352]

(The said 1938 return of Gertrude Gaylord Bruce, so offered and received in evidence was marked Respondent's Exhibit S, and made a part of this record.)

Treasury Department

FIELD FORM 1040
UNITED STATES

Internal Revenue Service

Page 1

1938 INDIVIDUAL INCOME TAX RETURN 1938

(Auditor's Stamp)

FOR NET INCOMES OF MORE THAN \$1,000 FROM SALARIES, WAGES, DIVIDENDS, INTEREST, ANNUITIES, AND FOR INCOMES FROM OTHER SOURCES REGARDLESS OF AMOUNTS

For Calendar Year 1938

or fiscal year beginning 1938, and ended 1938

(Before Preparing This Return, Read the Instructions Carefully)

To be filed with the Collector of Internal Revenue for your district not later than the 15th day of the first month following the close of your taxable year

PRINT NAME AND ADDRESS PLAINLY (Show Instructions 10)

GERTRUDE O. SHUCE

(Show also place of birth, marital and civil, if a joint return)

1406 Charlton Road

(Street and number, or rural route)

San Marino

Los Angeles

California

(Post office)

(County)

(State)

Do not use these spaces
374
08571

APR 24
1939

L. E. Mitchell

INCOME

1. Salaries and other compensation for personal services. (Show Schedule 1)	\$ 890 25
2. Dividends	
3. Interest on bank deposits, notes, mortgages, etc.	
4. Interest on corporation bonds	
5. Taxable interest on Government obligations, etc. (Show Schedule 1)	
6. Income (or loss) from partnerships, syndicates, pools, etc. (other than capital gains or losses). (Show name and address)	
7. Income from proprietorship. (Show name and address)	
George S. and Gertrude H. Gaylord, Pasadena	1,707 10
8. Rents and royalties. (Show Schedule 1)	103 10
9. Income (or loss) from business or profession. (Show Schedule 1)	
10. (a) Net short-term gain from sale or exchange of capital assets. (Show Schedule 1)	
(b) Net long-term gain (or loss) from sale or exchange of capital assets. (Show Schedule 1)	6,152 78
(c) Net gain (or loss) from sale or exchange of property other than capital assets. (Show Schedule 1)	
11. Other income (including income from annuities). (Show nature, and compute schedule if necessary)	
12. Total income in items 1 to 11. (Show computation shown in Schedule 1)	\$ 8,849 28

DEDUCTIONS

13. Contributions paid. (Schedule is Schedule 1) Community Chest	\$ 5 00
14. Interest. (Schedule is Schedule 1)	
15. Taxes. (Schedule is Schedule 1)	
16. Losses from fire, storm, shipwreck, or other casualty, or theft. (Schedule is Schedule 1)	
17. Bad debts. (Schedule is Schedule 1)	
18. Other deductions authorized by law. (Schedule is Schedule 1)	
19. Total deductions in items 13 to 18	\$ 44 28
20. Net income (from 12 minus item 19)	\$ 8,805 00

THE TAX COURT OF THE U.S.
DIV. 8 DOCKET # 1127
APR 2 - 1943
EXHIBIT 5
RESPONDENT'S

COMPUTATION OF TAX

21. Net income (from 20 above)	\$ 8,805 00
22. Less: Personal exemption. (Show Schedule 1-1)	\$ 2500 00
23. Credits for dependents. (Show Schedule 1-2)	233 33
24. Balance (surplus net income)	\$ 6,371 67
25. Less: Income on Government obligations, etc. (Show Schedule 1-3)	
26. Earned income credit. (Show Schedule 1-4)	300 00
27. Balance subject to normal tax	\$ 6,071 67
28. Normal tax (4% of item 27)	\$ 242 87
29. Surplus on item 24. (Show Instructions 10)	\$ 4 80
30. Total (from 28 plus item 29)	\$ 247 67
31. Total tax (from 28, or if you had a net long-term capital gain or loss, enter line 14, Schedule 1)	\$ 247 67
32. Less: Income tax paid at source	
33. Balance of tax (from 31 minus item 32 and 33)	\$ 247 67

NOTE—One has marked "DUPLICATE COPY" must be filed with this original return (It will be assumed if duplicate copy is not filed)

522

Schedule A—INCOME RECEIVED FROM OTHER SOURCES OF SALARIES, WAGES, FEES, AND OTHER COMPENSATION FOR PERSONAL SERVICES. (See Instruction 1)

1. Name and address of employer and nature of service	2. Amount	3. Source stated	4. Amount
1. Husband's salary	894 28		

Total of column 2 unless total of column 4 (enter on line 1, page 1)

Schedule B—INTEREST ON GOVERNMENT OBLIGATIONS, ETC. (See Instruction 2)

1. Obligation or security	2. Amount received or due at year beginning or ending, whichever gives larger amount	3. Interest received or due during the year	4. Interest received or due during the year	5. Interest received or due during the year
6a. Obligations of U. S. Govt., Territory, or political subdivision thereof, or the District of Columbia, or United States possessions			AS	.....
6b. Obligations issued under Federal Farm Loan Act, or under such Act as amended			AS	.....
6c. Obligations of United States issued up to July September 1, 1937			AS	.....
6d. Treasury Notes, Treasury Bills, and Treasury Certificates of Indebtedness			AS	.....
6e. United States Savings Bonds and Treasury Bonds			AS	.....
6f. Obligations of instrumentalities of the United States (other than obligations to be reported in 6a) above			None	
7. Total (enter on line 1, page 1)				

Schedule C—INCOME FROM RENTS AND ROYALTIES. (See Instruction 3)

1. Kind of property	2. Amount	3. Depreciation (Schedule E)	4. Net income	5. Other income	6. Total income
Dwelling	41600	226 00	66 60	19 30	103 10

Explanation of deductions claimed in columns 4 and 5: Painting \$67.00, Repair window \$1.00, Water \$10.30

Schedule D—PROFIT OR LOSS FROM BUSINESS OR PROFESSION. (See Instruction 4)

1. Total receipts (less nature of business or profession)		2. COST OF GOODS SOLD		3. OTHER BUSINESS DEDUCTIONS	
2. Labor		10. Salaries not included as "Labor" (do not deduct compensation for yourself)			
3. Material and supplies		11. Interest on business indebtedness			
4. Merchandise bought for sale		12. Taxes on business and business property			
5. Other costs (describe below)		13. Losses (explain below)			
6. Plus inventory at beginning of year		14. Bad debts arising from sales or services			
7. Total (Lines 2 to 6)		15. Depreciation, amortization, and depletion (explain on Schedule E)			
8. Less inventory at end of year		16. Rent, repairs, and other expenses (describe below or on separate sheet)			
9. Net cost of goods sold (Line 7 minus line 8)		17. Total (Lines 10 to 16)			
Enter "C," "T," or "M," on line 9 and 10 to indicate whether inventories are valued at cost, or cost or market, whichever is lower		18. Total deductions (Line 9 plus line 17)			
		19. Net profit (or loss) (Line 1 minus line 18) (enter on line 9, page 1)			

Explanation of deductions claimed in lines 5, 13, and 16

Schedule E—EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES C, D, F, AND G

1. Kind of property or building and nature of use	2. Date acquired	3. Cost or other basis	4. Accumulated depreciation at year beginning	5. Depreciation for the year	6. Remaining cost or other basis at year end	7. Estimated useful life in years	8. Method of depreciation	9. Amount of depreciation
Wood and plaster	1035	450 00		450 00	40 00	10	Y 1 Y	40 00

Schedule F—GAINS AND LOSSES FROM SALES OR EXCHANGES OF CAPITAL ASSETS. (See Instructions to Form 1041.)

[illegible]

SUMMARY OF CAPITAL NET GAINS OR LOSSES

[illegible]

State the family, schooling, or business relationship to you, if any, of purchaser of any of the above items
If any of the above items were acquired by you other than by purchase, explain fully how acquired.

COMPUTATION OF ALTERNATIVE TAX

On the way to the city, I met a man who was a member of the same party as I was. He was a man of about 40 years of age, and was very friendly to me. He told me that he was a member of the same party as I was, and that he was very friendly to me. He also told me that he was a member of the same party as I was, and that he was very friendly to me.

1. The Income Tax Return for 1968	1. 1000 00	2. 235 35	3. 2,755 35	4. 1000 00	5. 235 35	6. 2,755 35	7. 1000 00	8. 235 35	9. 2,755 35	10. 1000 00	11. 235 35	12. 2,755 35	13. 1000 00	14. 235 35	15. 2,755 35	16. 1000 00	17. 235 35	18. 2,755 35	19. 1000 00	20. 235 35	21. 2,755 35	22. 1000 00	23. 235 35	24. 2,755 35	25. 1000 00	26. 235 35	27. 2,755 35	28. 1000 00	29. 235 35	30. 2,755 35	31. 1000 00	32. 235 35	33. 2,755 35	34. 1000 00	35. 235 35	36. 2,755 35	37. 1000 00	38. 235 35	39. 2,755 35	40. 1000 00	41. 235 35	42. 2,755 35	43. 1000 00	44. 235 35	45. 2,755 35	46. 1000 00	47. 235 35	48. 2,755 35	49. 1000 00	50. 235 35	51. 2,755 35	52. 1000 00	53. 235 35	54. 2,755 35	55. 1000 00	56. 235 35	57. 2,755 35	58. 1000 00	59. 235 35	60. 2,755 35	61. 1000 00	62. 235 35	63. 2,755 35	64. 1000 00	65. 235 35	66. 2,755 35	67. 1000 00	68. 235 35	69. 2,755 35	70. 1000 00	71. 235 35	72. 2,755 35	73. 1000 00	74. 235 35	75. 2,755 35	76. 1000 00	77. 235 35	78. 2,755 35	79. 1000 00	80. 235 35	81. 2,755 35	82. 1000 00	83. 235 35	84. 2,755 35	85. 1000 00	86. 235 35	87. 2,755 35	88. 1000 00	89. 235 35	90. 2,755 35	91. 1000 00	92. 235 35	93. 2,755 35	94. 1000 00	95. 235 35	96. 2,755 35	97. 1000 00	98. 235 35	99. 2,755 35	100. 1000 00	101. 235 35	102. 2,755 35	103. 1000 00	104. 235 35	105. 2,755 35	106. 1000 00	107. 235 35	108. 2,755 35	109. 1000 00	110. 235 35	111. 2,755 35	112. 1000 00	113. 235 35	114. 2,755 35	115. 1000 00	116. 235 35	117. 2,755 35	118. 1000 00	119. 235 35	120. 2,755 35	121. 1000 00	122. 235 35	123. 2,755 35	124. 1000 00	125. 235 35	126. 2,755 35	127. 1000 00	128. 235 35	129. 2,755 35	130. 1000 00	131. 235 35	132. 2,755 35	133. 1000 00	134. 235 35	135. 2,755 35	136. 1000 00	137. 235 35	138. 2,755 35	139. 1000 00	140. 235 35	141. 2,755 35	142. 1000 00	143. 235 35	144. 2,755 35	145. 1000 00	146. 235 35	147. 2,755 35	148. 1000 00	149. 235 35	150. 2,755 35	151. 1000 00	152. 235 35	153. 2,755 35	154. 1000 00	155. 235 35	156. 2,755 35	157. 1000 00	158. 235 35	159. 2,755 35	160. 1000 00	161. 235 35	162. 2,755 35	163. 1000 00	164. 235 35	165. 2,755 35	166. 1000 00	167. 235 35	168. 2,755 35	169. 1000 00	170. 235 35	171. 2,755 35	172. 1000 00	173. 235 35	174. 2,755 35	175. 1000 00	176. 235 35	177. 2,755 35	178. 1000 00	179. 235 35	180. 2,755 35	181. 1000 00	182. 235 35	183. 2,755 35	184. 1000 00	185. 235 35	186. 2,755 35	187. 1000 00	188. 235 35	189. 2,755 35	190. 1000 00	191. 235 35	192. 2,755 35	193. 1000 00	194. 235 35	195. 2,755 35	196. 1000 00	197. 235 35	198. 2,755 35	199. 1000 00	200. 235 35	201. 2,755 35	202. 1000 00	203. 235 35	204. 2,755 35	205. 1000 00	206. 235 35	207. 2,755 35	208. 1000 00	209. 235 35	210. 2,755 35	211. 1000 00	212. 235 35	213. 2,755 35	214. 1000 00	215. 235 35	216. 2,755 35	217. 1000 00	218. 235 35	219. 2,755 35	220. 1000 00	221. 235 35	222. 2,755 35	223. 1000 00	224. 235 35	225. 2,755 35	226. 1000 00	227. 235 35	228. 2,755 35	229. 1000 00	230. 235 35	231. 2,755 35	232. 1000 00
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Schedule C.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF PROPERTY OTHER THAN CAPITAL ASSETS

1. Kind of property	2. How acquired	3. Date acquired	4. Date sold	5. Purchase price	6. Selling price	7. Capital gain or loss

Read and sign the back cover on Form 706, page 2.

1890

State the family, friendship, or business relationship to you, if any, of members of any of the above classes
if any of the above steps were required by you other than to purchase, explain fully how required. _____



Schedule M—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 13, 14, 15, 16, 17, AND 18

Item 15 - State income taxes	\$287.37
Taxes on residence	390.84
Personal property tax	102.74
Taxes on income property	67.97
Auto and dog license	16.00
	\$859.10

Schedule L—NONTAXABLE INCOME OTHER THAN INTEREST REPORTED IN SCHEDULE B. (See Instruction 12)

1. Name of donor	2. Name of donee	3. Amount

Schedule J—EXPLANATION OF CREDITS CLAIMED IN ITEMS 21 AND 22. (See Instructions 22 and 23)

(a) Personal Exemptions			(b) Credits for Dependents		
Name	Number of credits claimed for this person	Credit claimed	Name of dependent and relationship	Number of credits claimed for this person	Credit claimed
Single, or married and not living with husband or wife			Ann Bruce	7	\$233.33
Married and living with husband or wife	12	--			
Head of family (explain below)					
Reason for support if over 16 years old					

Schedule K—COMPUTATION OF EARNED INCOME CREDIT. (See Instruction 30)

(a) If your net income is \$14,000 or less, use only this part		(b) If your net income is more than \$14,000, use only this part	
Net income (from 2A, page 1)	\$	Earned net income (not more than \$14,000)	\$ 896.26
Earned income credit (10% of net income, above)		Net income (from 2A, page 1)	\$ 1,108.18
		Earned income credit (10% of earned net income or net income, above, whichever amount is smaller, but do not enter less than \$200)	300.00

QUESTIONS

1. State your principal occupation or profession. Investments
2. Check whether you are a citizen ☒ or a resident alien ☐.
3. If you filed a return for the preceding year, to which Collector's office was it sent? Los Angeles
4. Are there any income or deduction of both husband and wife included in this return? (See Instruction A.) No
5. State name of husband or wife if a separate return was made; personal exemption, if any, claimed thereon; and the Collector's office to which it was sent. Los Angeles - none claimed
6. Check whether this return was prepared on the cash ☒ or accrual ☐ basis.
7. Did you at any time during your taxable year own directly or indirectly any stock of a foreign corporation or a personal holding company as defined by section 402 (Answer "yes" or "no")? No (If answer is "yes," attach schedule required by Instruction 34.)

AFFIDAVIT. (See Instruction 37)

You swear (or affirm) that this return (including any accompanying schedules and statements) has been examined by you, and to the best of your knowledge and belief is a true, correct, and complete return, made in good faith, for the taxable year stated, pursuant to the Internal Act of 1936 and the regulations issued under authority thereof.

Subscribed and sworn to by Gertrude J. Bruce
before me this 23rd day of February, 1937

Gertrude J. Bruce
Signature of taxpayer

Witnessed by me, Adrian S. Jackson
Notary Public
My commission expires July 15, 1937

(If this is a joint return and made by you, it must be signed by both husband and wife. It must be sworn to before a person other than the person preparing the return. If either or both you gave the return, it must be sworn to by both spouses.)

AFFIDAVIT. (See Instruction 37)

(If this return was prepared for you by some other person, the following affidavit must be executed)
You swear (or affirm) that you prepared this return for the person or persons named herein and that the return (including any accompanying schedules and statements) is a true, correct, and complete statement of all the information regarding the income tax liability of the person or persons for whom this return has been prepared of which you have any knowledge.

Subscribed and sworn to before me this 24th day of Feb., 1937

James W. [Signature]
Signature of person preparing the return

Dorothy Speichels
Signature of preparer



JAMES W. [Signature]
111 W. [Address]

(Testimony of George S. Gaylord.)

Mr. Coon: Gertrude Gaylord Bruce for 1939.

The Judge: Exhibit T.

(The said 1939 return of Gertrude Gaylord Bruce, so offered and received in evidence, was marked Respondent's Exhibit T, and made a part of this record.)

FORM 1040
Internal Revenue Service

UNITED STATES
INDIVIDUAL INCOME TAX RETURN 1939

Page 1

FOR NET INCOMES OF MORE THAN \$1,000 FROM SALARIES, WAGES,
DIVIDENDS, INTEREST, ANNUITIES, AND FOR INCOMES FROM
OTHER SOURCES REGARDLESS OF AMOUNTS

For Calendar Year 1939 ✓

or fiscal year beginning 1938, and ended 1939

To be filed with the Collector of Internal Revenue for your district not later than the 15th day of the third month following the close of your taxable year

PRINT NAME AND ADDRESS PLAINLY, V. (Show Instructions C)

GEORGE W. BRUCE

(Show full name of last individual and wife, if this is a joint return)

1466 Charlton Road

(Street and number, or rural route)

San Marino Los Angeles California

(City)

(County)

(State)

Do not use these spaces
374
606.47

(Auditor's Stamp)
REVIEWED
By A. R. Heister
DATE MAY 31 1940

INCOME

1. Salaries and other compensation for personal services. (From Schedule D)	\$ 1,252	26
2. Dividends		
3. Interest on bank deposits, notes, mortgages, etc.		
4. Interest on corporation bonds		
5. Taxable interest on Government obligations, etc. (From Schedule B)		
6. Income (or loss) from partnerships, syndicates, pools, etc. (other than capital gains or losses). (From Schedule C)		
7. Income from fiduciaries. (From Schedule E)		
George W. and Gertrude W. Gaylor Trust, Pasadena	11,232	23
8. Rents and royalties. (From Schedule G)	111	24
9. Income (or loss) from business or profession. (From Schedule H)		
10. (a) Net short-term gain from sale or exchange of capital assets. (From Schedule I)		
(b) Net long-term gain (or loss) from sale or exchange of capital assets. (From Schedule J)		
(c) Net gain (or loss) from sale or exchange of property other than capital assets. (From Schedule K)		
11. Other income (including income from annuities) (Show source)		
12. Total income in items 1 to 11. (Show amounts from Schedule L)	\$ 12,500	51

DEDUCTIONS

13. Contributions paid. (Schedule to Schedule M)		
14. Interest. (Schedule to Schedule M)		
15. Taxes. (Schedule to Schedule M)		
16. Losses from fire, storm, shipwreck, or other casualty, or theft. (Schedule to Schedule M)		
17. Bad debts. (Schedule to Schedule M)		
18. Other deductions authorized by law. (Schedule to Schedule M)		
19. Total deductions in items 13 to 18.		
20. Net income (Item 12 minus item 19).	\$ 12,500	71

THE TAX COURT OF THE U.S.
DIV. 5 DOCKETED 10-24-40
APR 2 - 1943
EXHIBIT I
RESPONDENT S

COMPUTATION OF TAX

21. Net income (Item 20 above)	\$ 12,500	71
22. Less: Personal exemption. (From Schedule J-1)	\$ 2500	00
23. Credit for dependents. (From Schedule J-2)	1000	00
24. Balance (after net income)	\$ 9,250	71
25. Less: Income tax withheld on the income (From Schedule K-1 or K-2)		
26. Earned income credit. (From Schedule K-1 or K-2)	500	00
27. Balance subject to normal tax	\$ 8,750	71
28. Normal tax (4% of item 27)	\$ 350	28
29. Shortage on item 24. (See Instructions P)		
30. Total (Item 28 plus item 29)	\$ 350	28
31. Total tax (Item 30, or if you had a net long-term capital gain or loss, enter line 16, Schedule J)		
32. Less: Income tax paid at source		
33. Balance of tax (Item 31 minus item 32 and 33)		
34. Balance of tax (Item 31 minus item 32 and 33)	\$ 350	28

NOTE.—One form marked "DUPLICATE COPY" must be filed with this original return (It will be returned if duplicate copy is not filed)

(Testimony of George S. Gaylord.)

Mr. Coon: I offer all of the same in evidence, as identified, your Honor.

The Judge: Yes. They have been received.

Mr. Coon: If your Honor please, I move for permission to cause photostat copies of those returns to be made and substituted in the usual way.

The Judge: That may be done.

By Mr. Coon:

The Witness: The age of my older daughter in 1935 was 31 years old. The age of my other daughter in 1935 19. The younger daughter was not married.

Q. Now, in 1935, at the time the trust instrument in question was executed, what was your business in a general way? Of course, we all understand it was in connection likely with this paper mills company.

A. I was completely divorced in 1935——

Q. From that?

A. ——from any active participation in any business.

Q. You were in a way, you might say, retired then?

A. Yes. [353]

I never practiced law. I had never been a trust officer or banker. I knew the difference between giving my money away and giving it away with a string on it. I told my attorney I wanted an irrevocable trust. I went to the university.

Q. Well, did you tell him you wanted an irrevocable trust or did you tell him you wanted to give your money away with a string to it, or what did you tell him?

(Testimony of George S. Gaylord.)

A. I told him we wanted an irrevocable trust, that we wanted to give this away forever.

We did not go over with our attorney before the trust was typed up the provisions in it relative to the authority given me and Mrs. Gaylord as trustees over the corpus of the trust, the powers reserved to the trustees or given to the trustees. I left that to him. There was no talk between me and him about the reserve power to purchase and sell stock.

Witness excused.

GERTRUDE HULING GAYLORD

called as a witness by and on behalf of the petitioners, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Dockweiler:

Witness: I am one of the petitioners in these proceedings. I am the wife of George S. Gaylord and have been his wife during all the times that have been mentioned.

Q. What was your understanding, if any, with Mr. Gaylord in connection with the creation of the trust provided for in the [354] Declaration of Trust dated November 7, 1935, and which has been introduced in evidence as Petitioners' Exhibit No. 1?

(Testimony of Gertrude Huling Gaylord.)

A. Mr. Gaylord and I had made up our minds to give our children some money, both of them, so we had talked it over and we had decided that if I gave 2,000 shares of the Marathon Paper Mills, he would give 5,000, and that was the way it was decided, and you were asked to draw up the trust.

Q. Was there any discussion as to how long this trust was to last, or whether you would have any right to change it?

A. Well, I thought it was to last forever. That was the understanding. There was no mention ever of having any power to do anything with it. I never knew that you could, even.

Q. And it was on that understanding of your mutual contributions?

A. That the children were to have it forever.

Q. By "the children," you mean your daughters?

A. My daughters.

The handling of the trust affairs, the business of the trust, after the trust was instituted, was taken care of by Mr. Gaylord, as trustee, who conducted the business of the trust. I left everything to him. I had perfect confidence in his ability in every way. I signed whatever documents were necessary from time to time. I owned as my separate property the 2,000 shares I contributed to the trust.

That is my signature, "Gertrude H. Gaylord," on the photographic copy of my gift tax return for the year 1935, which has been introduced in evidence as Petitioners' Exhibit No. 3, [355] now

(Testimony of Gertrude Huling Gaylord.)

shown to me. I swore to it before Alice F. Jackson on the 3rd day of February, 1936. That return was prepared by Mr. Gaylord. I read the return before signing it.

Q. And was this answer correct, in answer to the question: "Have you (the donor), during the calendar year indicated above, without an adequate and full consideration in money or money's worth, made any transfer exceeding \$5,000 in value (or regardless of value if a future interest) as follows?" And to the question: "By the creation of an irrevocable trust for the benefit of another?" And the answer in there is "Yes"?

A. Yes.

The answer "No" to the second question, "By making additions to an irrevocable trust previously created for the benefit of another?", in said return is correct. There was no other trust in existence at the time I signed this return than the trust of November 7, 1935.

Mr. Dockweiler: That is all.

Mr. Coon: No questions.

The Judge: Mr. Coon, do you have any questions?

Mr. Coon: No questions.

The Judge: You are excused.

Mr. Dockweiler: Now, if there is no objection, I want to excuse Mrs. Gaylord—unless you want Mrs. Gaylord back, I want to excuse her for the balance of the proceedings, so she will not have to return.

(Testimony of Gertrude Huling Gaylord.)

Mr. Coon: That is agreeable to me.

The Judge: You may be excused.

The Witness: All right.

Witness excused. [356]

It was stipulated between counsel for the petitioners and counsel for the respondent that the attorney who prepared the Declaration of Trust dated November 7, 1935 (Petitioners' Exhibit No. 1 theretofore received in evidence and Exhibit A to the petitions of the petitioners herein) did not at the time of drafting said declaration know of the 1931 amendment to Section 2280 of the Code of Civil Procedure.

The petitioners thereupon rested.

EVIDENCE ON BEHALF OF RESPONDENT

(The hearing having been adjourned at 5:18 o'clock P. M. on April 2, 1943, to April 3, 1943, at 10:00 o'clock A. M., was resumed on said last mentioned day at 10:02 o'clock A. M.)

JOSEPH A. FIELD,

called as a witness by and on behalf of the respondent, having been first duly sworn, was examined and testified as follows:

Direct Examination

Mr. Coon: Your Honor please, I think for the information of yourself and also counsel, it will be well for me to make a brief statement

(Testimony of Joseph A. Field.)

before I ask this witness any questions. The purpose in putting him on the stand is to have him identify a schedule called Exhibit A, which is a part of his report of his examination of the stock transactions in this case, and my interrogation of him will be merely to show by him the method which he used, which is the Government's method in ascertaining the base that we rely on of \$2.83 and a fraction a share. I am doing this because I believe that your Honor should have in the [357] file the basic method—I mean our method of arriving at that computation, and I don't propose to put in the report as evidence, and I don't, in doing this, claim that any unverified date or figure in this schedule is evidence.

Mr. Dockweiler: There is certainly no objection on our part to have the Court fully informed as to the method or manner whereby the Government's figures were arrived at. Some of those figures we may at a later time be able to stipulate to as correct figures. Others I believe are vitally in dispute. But I believe the Court should have the various methods. We have given our method and the Government's method should be before the Court as well.

The Judge: That would be helpful. I desire, gentlemen, for the record to be in this shape: that any figures that are in dispute be definite, so that I shall not have any trouble in dealing with these two methods, and that those that are shown by the

(Testimony of Joseph A. Field.)

evidence or relied upon by the parties, as shown by the parties, all those that are agreed to as being correct figures be definite enough so that we can work with them. The possibility of having some figures lurking in documents such as were presented by the petitioner here yesterday, and as might be in there is about the only worry I have from it. But you gentlemen apparently have given that matter some thought, so I will have to rely on you to see that the record is clear on it, so that when I come to determine the facts or consider the facts from the evidence that I shall not be left dangling in the air on some of them. [358]

Mr. Coon: Yes, your Honor. I might say I will show this to counsel.

Mr. Dockweiler: Are you going to put them both together as Exhibit A?

Mr. Coon. Yes. I might say that I am sure there is no dispute between us as to the dates in the schedule. There is no dispute between us as to some of the figures. The divergencies will occur where the amalgamations and consolidations of companies occur, and we took a different figure and have a different base than the taxpayers.

Mr. Dockweiler: That is true.

The Judge: If they work out, or if those differences are the result of a different method of computation and approach, why, it would seem to me offhand that that should be cleared up when we get your two theories down in your brief.

(Testimony of Joseph A. Field.)

Mr. Coon: That would be a matter of argument in the briefs.

The Judge: That is the theory I was proceeding on, for yesterday, for instance, I couldn't possibly absorb all of that matter about which Mr. Gaylord was testifying, when he referred to those various exhibits to his petition, and I will have to follow them through more carefully when I come to determine the facts, and so I necessarily have to depend on you gentlemen to make the record complete, and I am assuming you will.

Mr. Coon: Yes, sir.

By Mr. Coon:

The Witness: I am the agent who investigated and [359] examined into Mr. Gaylord's stock transactions with reference to the Marathon Paper Mills Company and the other corporations preceding it, which were described by him in his testimony yesterday. I was here yesterday when Mr. Gaylord testified. Just before taking the stand, I re-examined the report that I had made and filed with the Bureau of Internal Revenue covering my examination of these stock transactions. I have before me what is referred to in that report as Exhibit A, which has been detached from it for the purpose of this testimony at this time. This Exhibit A consists of two pages. The first page starts with the transactions of the Menasha Carton Company from its inception in April of 1912, and culminating in August of 1917 at the time the Mena-

(Testimony of Joseph A. Field.)

sha Printing and Carton Company was organized to take over the Menasha Carton Company and the Menasha Printing Company. The first portion of the schedule under the heading "Menasha Carton Company" shows the stock purchases of Mr. Gaylord during the five year period preceding the consolidation, at which time he had purchased 337 shares at a cost of \$34,436.50. Some of these figures were obtained from an information report prepared by the Milwaukee Division at the request of the Securities Section in Washington, upon a request from the Los Angeles office. At the time the consolidation took place, Mr. Gaylord received both preferred and common stock of the Menasha Printing and Carton Company for his Menasha Carton Company stock. The cost of the stock, as he had paid \$34,436.50, was allocated to the preferred and the common on the relative par value of the two stocks, so that for the 190 shares of preferred there was allocated \$10,468.70, [360] and to the 435 shares of common there was allocated \$23,967.80. Following this one exchange there were numerous purchases and sales up to and including 1927, at which time the stock was transferred or exchanged for Marathon Paper Mills Company stock. The second sheet of the exhibit deals with the stock of Marathon Paper Mills, as it had been received for that of the Menasha Products Company. The basis used here is on a formula furnished by the Internal Revenue Bureau in Washington, giving the allocation between the stock and

(Testimony of Joseph A. Field.)

the bonds. The allocation as here made and as used here, I believe was made back in the year 1928, and on that allocation between the bonds and the stock there is no difference of opinion. We used the same as the taxpayer. After the exchange, all of the bonds were sold by the year 1934, the biggest block of them being sold in 1928. The stock was sold from 1927 until the final sale in 1939. I believe that covers it.

My tabulation reaches a final result of \$2.83 and a fraction a share.

Q. Now, the tabulation of the taxpayer is—\$8.41 is it?

Mr. Dockweiler: \$8.21.

By Mr. Coon:

Q. \$8.21 a share. Now, will you point out to his Honor just by what method you diverged from the method of the taxpayer to get this \$2.83?

A. Would it be possible for me to see one of the income tax returns to refresh my memory—of Mr. Gaylord's? 1937 will be sufficient. The schedules in all four returns are the same. [361]

Q. Do you intend to indicate or are you indicating in any way by your statement in reference to the 1937 return that you used data and figures of Mr. Gaylord's in the 1937 return?

A. Only as to the number of shares of stock sold.

My investigation had to deal with the revising of the basic cost, and I am just referring to this

(Testimony of Joseph A. Field.)

to refresh my memory as to the basis used, and how it was arrived at. In the income tax returns for these four years there was included on the return as the first item a March 1, 1913 value of \$350,000. At this point Mr. Gaylord had only invested \$9,950. Most of the stock in the total number of shares of 337 was purchased subsequent to March 1, 1913. The valuation of \$350,000 is a figure supposed to represent a valuation for his cost of \$34,436.50. At the time of the consolidation Mr. Gaylord invested \$152,161.11, which he added to the \$350,000, giving a valuation of \$502,000 as a total cost of the stock.

Mr. Dockweiler: You mean \$502,500?

The Witness: Yes. That is in round figures. In my report I made no reference to a fair market value of the stock upon advice from Washington that same did not have a valuation above cost. The \$152,000 that was invested in 1917, of course, could not be in dispute. The only valuation was on the stock that he had purchased prior to the consolidation. The preferred stock that was received in the exchange was retired within a very few years, and Mr. Gaylord had reduced his total valuation of \$502,500 by \$20,000, or the amount he received for the preferred stock. The balance was allocated between the bonds and [362] the stock of the Marathon Paper Mills when that exchange was made. In so doing a valuation, a final valuation of \$8.21 per share was arrived at through various stock

(Testimony of Joseph A. Field.)

dividends and a four for one split in the year of 1929.

By Mr. Coon:

Q. Arrived at by Mr. Gaylord, you mean?

A. That is right. My computations came down to a valuation of \$2.8367 per share for the stock that was held as of January 1, 1936.

Q. Now, by way of summation, would you just point out, Mr. Field, what particular modus of yours produced that valuation of \$2.83, distinguishing your process from Mr. Gaylord's? In other words, tell his Honor just how you got the \$2.83 instead of \$8.21.

A. The major difference is in that Mr. Gaylord used a valuation of \$350,000 for stock that I used a valuation on of \$34,436.50.

Q. Well, do you know why Mr. Gaylord used that larger figure?

A. That was used as an apparent fair market value, supposedly, as of the date of the consolidation. However, his return showed March 1, 1913, the beginning of the income tax law. That date I believe they would concede as being in error for a valuation at that time, inasmuch as most of his stock was acquired after that date. Then there is a second difference. In the testimony yesterday was produced a note in the sum of \$152,161.11. From the information on the note it might be [363] supposed that that note was to pay for 1,525 shares of stock purchased from Mr. Clinedinst, and, as

(Testimony of Joseph A. Field.)

such, was used in my report. The basic stock of 435 shares of the Menasha Printing and Carton Company, when it was exchanged for Marathon Paper Mills, had a final sum of 713 shares, due to various purchases, sales and a 100 per cent stock dividend. This 713 shares was all sold in the year 1927, so the basic cost of \$2,8367 culminates from the purchase that I have recorded here of 1,525 shares for \$152,161.11. Through various stock dividends and a four for one split, it finally culminated in 13,412 shares as of January 1, 1936.

Mr. Coon: That is all on direct examination.

Cross Examination

By Mr. Dockweiler:

Q. Mr. Field, in a discussion in court yesterday mention was made of the fact that this 1917 reorganization would have been a taxable reorganization, although the taxpayer at the time did not so regard it. But we were speaking of that. If that were a taxable reorganization in 1917, then wouldn't the basis of the stock properly have been, that is, the basis of what Mr. Gaylord contributed to that reorganization, the value then of the carton company stock, the Menasha Carton Company stock, which was owned by Mr. Gaylord, that is, owned half by Mr. Gaylord, and his partner was also associated with him in that business?

A. Yes.

Q. You remember that Mr. Clinedinst owned the Printing Company entirely? [364]

(Testimony of Joseph A. Field.)

A. Yes.

Q. And Mr. Gaylord and Mr. Clinedinst owned and operated the Carton Company? A. Yes.

Q. And Mr. Gaylord and Mr. Clinedinst contributed their holdings in the Carton Company with Mr. Clinedinst's interest in the printing company to the new Carton and Printing Company?

A. That is correct.

The Judge: You appreciate that that is a question of law, don't you?

Mr. Dockweiler: I am trying to find out why it was ignored in the figures, your Honor.

By Mr. Dockweiler:

Q. Why was the actual value of the stock of Mr. Gaylord in the Carton Company ignored and merely the amounts of the moneys he had originally paid for it used?

Mr. Coon: I object to the witness answering that question. I think that is something the Court will have to pass on.

The Judge: I don't think it makes any difference whether he answers it or not. He is put on here to testify what he did, and he says that he used cost. Mr. Gaylord used value, and that shows what each one did, and as to whether one is right and the other is wrong is a question of law.

Mr. Dockweiler: I admit that, your Honor.

The Judge: It seems so to me. I don't want to cut you [365] off from any proper cross examination of this witness, but so far as I can see it just

(Testimony of Joseph A. Field.)

wouldn't amount to anything, because, after all, I would have to determine that myself.

Mr. Dockweiler: I think the point is sufficiently clear that this factor of value was ignored by the witness and only the cash contributions of Mr. Gaylord were considered.

The Judge: This testimony here does bring to the fore the question I had in mind yesterday. And I should like to be clear on one point about it. I was noting, and one of the things that puzzled me yesterday at the time I was asking questions was the statement there of \$350,000 as the fair market value as of March 1, 1913, and I couldn't tie all those things together. I couldn't understand where we were headed. Now I have heard some testimony here suggesting that this witness was of the view that that \$350,000 was the fair market value of the stock given up in the 1917 transaction, and was therefore regarded as the cost by this taxpayer of the Carton and Printing Company stock. So if there is that discrepancy in the computation of the petitioner, and that figure of \$350,000 doesn't represent fair market value as of March 1, 1913, as your Exhibit F indicates, to which Mr. Gaylord testified, it seems to me that you have got to get it in the record and clear it up, perhaps by the parties agreeing.

By Mr. Dockweiler:

Q. Now, in your figures, that is, referring to the first sheet of this exhibit you have before you—

(Testimony of Joseph A. Field.)

A. Yes, sir. [366]

Q. —I notice that after the Menasha Carton Company block, coming down to the Menasha Printing and Carton Company block—

A. Yes.

Q. —the first figures are 8-15-17, and then there is a minus 337, and then a minus \$34,436.50. Then following the shares of preferred, 190 acquired, the amount of \$10,468.70, and the common, 435 shares, \$23,967.80. Then over in the column headed "Menasha Printing and Carton Company purchased stock," the common shares, 1,525, and in the line just below that and after the date 8-30-17; that shows purchased 1,525 shares and the amount of \$152,161.11. I take it, then, in arriving at those figures you did not consider the contention that taxpayer has always made that those 1,525 shares plus the amount or the value which you show of \$152,161.11, or, rather, the figure of \$152,161.11 were all a part of the same reorganization transaction?

A. I considered them as two separate transactions.

Q. That is the point I want to bring out. The Government in arriving at those figures did consider the item that you have labeled "Exchange", the item dated 8-15-17, and the item that you have labeled, "Purchased," 8-30-17, as two separate transactions and not as a part of the one transaction of the reorganization of the Menasha Carton

(Testimony of Joseph A. Field.)

Company and the Menasha Printing Company into the Menasha Printing and Carton Company?

A. That is right. [367]

Q. Is that correct?

Mr. Coon: That is correct, your Honor.

Mr. Dockweiler: I want to bring that out, your Honor, because of the difference in the testimony between Mr. Gaylord and what the Government's contention is in this computation shown on the first page of the exhibit which you have before you, and I think we ought to have that identified as Respondent's Exhibit U.

Mr. Coon: The one the witness has now?

Mr. Dockweiler: Yes.

Mr. Coon: Yes, I intended to ascertain the right number, and if it is "U", I will offer it.

The Judge: "U" is the next exhibit. Do you want to offer it?

Mr. Coon: I will offer it now, your Honor, as Respondent's Exhibit U.

The Judge: Any objection?

Mr. Dockweiler: As showing the method of computation only?

The Judge: That is the understanding.

Mr. Coon: Yes.

Mr. Dockweiler: No objection.

The Judge: It will be marked in evidence as Respondent's Exhibit U.

(The said computation so offered and received in evidence was marked Respondent's Exhibit U, and made a part of this record.)

(Testimony of Joseph A. Field.)

By Mr. Dockweiler:

Q. The exhibit I have heretofore referred to while you have been on the stand, Mr. Field, has been this Exhibit U? A. Right.

Q. Now, in this Exhibit U, the figures indicate, do they not, that you considered that the 1,525 shares shown in the last column on the right hand side of the page under the heading "Manasha Printing and Carton Company" were purchased with the note for \$152,161.11——

A. Yes.

Q. ——that you also testified to? A. Yes.

Q. And, again, that it was not a transaction that was a part and parcel of and intimately involved with the whole arrangement for the reorganization of those two companies, the Printing Company and the Carton Company?

A. That is right. It was considered as separate transactions.

Mr. Dockweiler: That is all.

Mr. Coon: That is all, your Honor.

The Judge: You are excused.

(Witness Excused.)

Mr. Coon: Respondent rests.

Mr. Dockweiler: Your Honor, I propose as a stipulation that the date shown on Exhibit F, March 1, 1913, as the date of the evaluation of Mr. Gaylord's interest in the Menasha Carton Company be July 1, 1917. That date is manifestly in error, and [369] the values that were testified

to yesterday are the values as of July 1, 1917 and not March 1, 1913.

The Judge: That is Exhibit F to the petition?

Mr. Dockweiler: Yes. I don't know how we overlooked that in all of the months, in fact, all of the years, I should say, since this controversy arose.

The Judge: I couldn't understand it yesterday. That is the reason I was inquiring.

Mr. Dockweiler: Mr. Gaylord, that value of \$350,000 was the value of your interest in the Carton Company, the Menasha Carton Company, as of July 1, 1917?

Mr. Gaylord: Yes, it was, as figured by us.

Mr. Dockweiler: Is that satisfactory to the Government, as coming up in that manner?

Mr. Coon: Yes, your Honor.

Mr. Dockweiler: Because it is obviously an error.

Mr. Coon: The respondent agrees that the petitioner has erroneously used the date March 1, 1913 instead of July 1, 1917.

The Judge: Do you admit that it was the value on March 1, 1913—not March 1, 1913, but July 1, 1917?

Mr. Coon: No, we don't your Honor. That is where we diverge. We just agree that there has been that mistake as to the date.

The Judge: I just wanted to make sure about how far this goes.

Mr. Dockweiler: Mr. Gaylord, will you take the stand again, please? I will ask the question

- 17 -

George S. Caylord

1936, 1937, 1938 and 1939

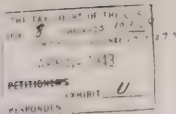


Exhibit A
Computation of Issue of Marathon Paper Mills Co.
Stock as of January 1, 1936

Date	Menasha Carton Co.		Menasha Printing & Carton Co. received in exchange for Menasha Carton Co.				Menasha Printing & Carton Co. Purchased Stock	
	Shares	Amount	Preferred		Common		Common	
			Shares	Amount	Shares	Amount	Shares	Amount
4-16-12 to								
1-16-14	Purchased	99-1/2		9,950.00				
1-16-14	"	20		2,000.00				
10-20-14	"	94-1/2		9,450.00				
4-8-15	"	18		1,800.00				
5-31-16	"	100		10,000.00				
7-1-17	"	5		1,236.50				
Total		337		34,436.50				
8-15-17	Exchange	- 337		- 34,436.50	190	10,468.70		
8-15-17	Purchased						1,525	152,161.11
4-15-20 to	Preferred							
4-15-20	Retired		- 190	- 10,468.70				
2-2-21	Sold				- 100	- 5,509.84		
2-2-21	"				- 50	- 2,754.92		
1-23-23	Purchased				50	2,754.92		
1-23-23 to	Presumably							
1-2-25	sold				- 85	- 4,683.36		
1-2-25	100% Stock Dividend				250		1,525	
10-5-25	Sold				- 350	- 9,642.22		
4-1-26	"				- 100	- 2,754.92		
"	"				- 20	- 550.98		
"	"				- 10	- 275.49		
"	"				- 5	- 137.75		
"	"				- 5	- 137.75		
"	"				- 5	- 137.75		
"	"				- 5	- 137.74		
8-30-26							- 20	- 997.78
8-24-27	Purchased				352	9,642.22	- 25	- 1,247.22
Total					352	9,642.22	3,005	149,916.11

On 10-31-27 Menasha Printing & Carton Co. merged with Marathon Paper Mills Company. As of this date taxpayer held 3,357 shares Menasha Printing & Carton Co. stock for which he was to receive:

6,795 shares Marathon stock valued @ \$130.30 per share, or	885,388.50	16.03%	713	4,138.60	6,082	69,010.88
\$1,038,000 Bonds at par	1,038,000.00	53.96%	108,840.00	5,203.62	989,160.00	80,905.23
	1,923,388.50	100.00%				

4-1

George S. Gaylord

1936, 1937, 1938 and 1939

Exhibit A (continued)
Computation of Basis of Marathon Paper Mills Co.
Stock as of January 1, 1936

Marathon Paper Mills Company Stock
Received in exchange for Menasha Printing & Carton Co.
Applicable to stock purchased Applicable to Stock purchased
prior to 8-15-17 8-30-17 from S. H.
Clinedinst

Date	Prior to 8-15-17		8-30-17 from S. H. Clinedinst		Marathon Stock Purchased
	Shares	Amount	Shares	Amount	Shares Amount
10-11-27	713	4,438.60	7,6082	69,010.88	
10-31-27	- 700	- 4,357.67			
10-31-27	- 13	- 80.93	- 54	- 612.72	
12-2-29			18,084		
4-to-1 Stock split up					
2-9-32			- 5,000	- 14,183.42	100 1,700.00
1-13-33					
11-12-35			- 350	- 992.84	
11-20-35			- 350	- 992.84	
11-7-35			- 5,000	- 14,183.42	
Gift to Gaylord Trust			13,412	38,045.64	100 1,700.00
Balance					
Price per Share			4	\$2.8367	17.00

as to value of his interest as an owner at this time. [370]

GEORGE S. GAYLORD.

recalled as a witness by and on behalf of the petitioners, having been previously duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Dockweiler:

The Witness: This reorganization of the Menasha Carton Company and the Menasha Printing Company, to which I testified yesterday, into the Menasha Printing and Carton Company was made as of July 1, 1917. There was a period of some days and weeks before the thing was completed and it was made as of July 1, 1917.

Q. What was the value, the fair market value at that time of your interest, your stock interest, in the Menasha Carton Company, which you contributed to the reorganization?

Mr. Coon: Just a minute before you answer. I object to the witness answering, your Honor, on account of the fact his testimony as to the value as of that date is incompetent and immaterial.

The Judge: The objection will be overruled. You may answer.

The Witness: We figured it at \$350,000 as of July 1, 1917.

(Testimony of George S. Gaylord.)

By Mr. Dockweiler:

Q. That, in your opinion, was the fair market value at that time?

A. Yes, as figured in Exhibit F of our petition.
[371]

Q. Well, I mean, as of July 1, 1917, that, in your opinion, was the fair market value of your stock interest——

A. It was.

Q. ——in the Carton Company?

A. It was.

Mr. Dockweiler: That is all.

The Judge: Just a minute. Any questions?

Cross Examination

By Mr. Coon:

Q. Mr. Gaylord, do you recall whether or not several years ago in Milwaukee the question came up in the office of the Revenue Agent there as to the value of the 337 shares of capital stock of the Menasha Carton Company that we have been discussing?

A. No, I never had a conversation in Milwaukee with any Federal Income Tax agent.

Q. I have here what purports to be a copy of a statement made by you on the 30th day of August, 1917, at Manasha, Wisconsin, and for the purpose of refreshing your memory, I will read it.

Mr. Dockweiler: That date is the 30th day of August, 1917?

Mr. Coon: The 30th day of August, 1917.

(Testimony of George S. Gaylord.)

By Mr. Coon:

Q. This reads, "I, George S. Gaylord, of Neenah, Wisconsin,"—is that the way you pronounce it? A. Neenah.

Q. (Continuing): ——"owner of 337 shares of the capital [372] stock of the Menasha Carton Company do hereby elect that my share of the purchase price or sale of the properties, accounts, control and business of said Menasha Carton Company to the Menasha Printing and Carton Company be paid to me by application of the amount of my share, estimated at about \$86,338.89, on shares of capital stock of the Menasha Printing and Carton Company subscribed for and to be issued to me by said company to the amount of \$45,338.89, and request that the amount aforesaid be charged to my account as such stockholder, and the balance thereof, the sum of \$41,000 be held to my credit and applied as directed on purchase price of bonds of the Menasha Printing and Carton Company when issued."

A. I don't doubt—

Q. There is a little more to it:

"And I hereby acknowledge that I have received of the Menasha Carton Company the sum of \$86,338.89 to be applied in payment of the share of such purchase price in the assets of said Menasha Carton Company, belonging to me as a stockholder of said company, and the share to be distributed to the shares of capital stock owned by me in such corporation.

(Testimony of George S. Gaylord.)

"Dated, Menasha, Wisconsin, this 30th day of August, 1917.

"Signed, G. S. Gaylord."

A. Yes. Well, I don't doubt that is true. I don't recollect it at all. It sounds to me like a formal application to the Wisconsin authorities for the issuance of stock, but it merely reiterates what already appears in our own exhibit, merely [373] checking the amounts as appeared in our books, which had nothing to do with value.

Mr. Coon: I believe that is all.

Redirect Examination

By Mr. Dockweiler:

Q. Do I understand that those amounts, as you testified yesterday, were the book or appraisal value of the assets on the books, exclusive of earning power and exclusive of good will?

A. They were, exactly.

Mr. Dockweiler: That is all.

Mr. Coon: No further questions.

The Judge: You are excused.

(Witness Excused.)

Mr. Dockweiler: We rest, your Honor.

The Judge: Anything further?

Mr. Coon: Respondent rests, your Honor.

The Judge: Then the case will stand submitted upon the filing of briefs.

Hearing Concluded.

Petitioners' Exhibits Nos. 1 to 6, inclusive, referred to in the foregoing Statement of Evidence

and Respondents' Exhibits Nos. A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T and U, referred to in said Statement of Evidence, are transmitted herewith and made a part of this Statement of Evidence as if fully set forth herein. Said petitioners, George S. Gaylord and Gertrude H. Gaylord, tender and present the foregoing as [374] their Statement of Evidence in these causes and pray that the same may be approved by The Tax Court of the United States and made a part of the record in said causes.

THOMAS A. J. DOCKWEILER

whose post office address is 1035 L. N. Van Nuys Building, 210 West Seventh Street, Los Angeles 14, California.

JAMES W. BONTEMS, C.P.A.

whose post office address is 215 West Sixth Street, Los Angeles 14, California.

Attorneys for said petitioners George S. Gaylord and Gertrude H. Gaylord.

Personal service of a copy of the foregoing Statement of Evidence is hereby acknowledged this 13th day of November, 1944. Agreed to:

J. P. WENCHEL;

Chief Counsel, Bureau of
Internal Revenue;

B. H. NEBLETT,

Division Counsel, Bureau of
Internal Revenue;

HAROLD D. THOMAS,

EARL C. CROUTER and

B. M. COON,

Special Attorneys, Bureau of
Internal Revenue.

By J. P. WENCHEL

CAR

Attorneys for said Commis-
sioner. [375]

ORDER APPROVING STATEMENT OF EVIDENCE

The foregoing statement of evidence is hereby approved and settled this day of November, 1944.

.....

Judge of the United States Court of Tax Appeals.

[Endorsed]: T.C.U.S. Filed Nov. 13, 1944. [376]

The Tax Court of the United States

Docket No. 109138

GEORGE S. GAYLORD,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Docket No. 109273

GERTRUDE H. GAYLORD,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

STIPULATION

It is hereby stipulated and agreed by the undersigned attorneys of record for the petitioners and the respondent in the above-entitled cases that Exhibit B of the petitions in each of said cases, which purports to be a copy of the original Declaration of Trust, dated November 7, 1935, which was introduced at the trial as Petitioner's Exhibit 1, contains two errors in copying, which should be corrected as follows:

Line 12, par. 13, of said Exhibit B of the petitions which reads, "The Northern Trust Company, of Chicago, Illinois," should have added thereto the

word "and", which was inadvertently X'd out of the copy. [542]

The last line of page 13 of said Exhibit B, which reads, "bond or bonds of other security whatever shall ever be" should read, in order to correctly conform to the original document, "bond or bonds or other security whatever shall ever be".

In view of the agreement between counsel that the said Exhibits B and C of the petitions shall be substituted in evidence for said Exhibits 1 and 4, the Court is requested to make the above indicated corrections.

It is further stipulated that the said Exhibit C of the petitions is a true and correct copy of the original document introduced in evidence as Exhibit 4.

(Signed) THOMAS A. J. DOCKWEILER

(Signed) JAMES W. BONTEMS

(Signed) By THOMAS A. J. DOCKWEILER
Counsel for Petitioners.

(Signed) J. P. WENCHEL ECC

Chief Counsel, Bureau of
Internal Revenue.

Counsel for Respondent.

[Endorsed]: T.C.U.S. Filed Apr. 12, 1943.

[543]

In the United States Circuit Court of Appeals
for the Ninth Circuit

The Tax Court of the United States

Docket No. 109138

GEORGE S. GAYLORD,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

The Tax Court of the United States

Docket No. 109273

GERTRUDE H. GAYLORD,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PRAECIPE FOR THE RECORD

To the Clerk of the Tax Court of the United States:

You are hereby requested to prepare, certify and transmit to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, with reference to the petitions for review of the above named petitioners George S. Gaylord and Gertrude H. Gaylord heretofore filed by them in

the above entitled and referred to causes, within forty (40) days from the filing of said petitions, a typewritten copy of the record on review in said above entitled and referred to causes, all as required by law and the rules of said court, and to include [544] in the transcript of said record so to be prepared, certified and transmitted the following documents and records or certified copies thereof, to-wit:

(1) The docket entries of all proceedings before or in the United States Board of Tax Appeals and/or The Tax Court of the United States in each of said above causes, Docket Nos. 109138 and 109273;

(2) Petition of said petitioner George S. Gaylord, including Exhibits A, B, C, D, E, F, G and H thereto;

(3) Answer of the respondent commissioner to said petition;

(4) Petition of said petitioner Gertrude H. Gaylord, including Exhibits A, B, C, D, E, F, G and H thereto;

(5) Answer of the respondent commissioner thereto;

(6) Findings of Fact and opinion of the Tax Court of the United States in said two causes, Docket Nos. 109138 and 109273, promulgated February 18, 1944;

(7) Said petitioners' Motion For Reconsideration By The Tax Court Of The United States Of Its Decision Promulgated February 18, 1944, In

The Above Entitled And Referred To Proceedings Determining (1) That The Income For The Years 1936 Through 1939 Of The Trust Involved In Said Proceedings Was Taxable To The Above Named Petitioners And (2) That The Basis For Computing Gain On Certain Corporate Stock Sold By Said Petitioners And Said Trust During The Years 1936 Through 1939 Was Not \$8.21 Per Share filed with the clerk of said court March 17, 1944; [545]

(8) Order of said court denying said motion;

(9) Respondent's Computation For Entry Of Decision in said cause No. 109273, filed with the clerk of said court May 17, 1944;

(10) Respondent's Revised Computation For Entry Of Decision in said cause No. 109138, filed with the clerk of said court July 13, 1944;

(11) Decision of said court entered in said cause No. 109273 July 14, 1944;

(12) Decision of said court entered in said cause No. 109138 August 4, 1944;

(13) Said petitioner George S. Gaylord's Petition For Review Of Decision Of The Tax Court Of The United States in said cause No. 109138, filed with the clerk of said court October 11, 1944;

(14) Notice of filing of said petition and admission by the attorneys for said respondent of service of copy of said petition and of said notice, filed with the clerk of said court October 11, 1944;

(15) Said petitioner Gertrude H. Gaylord's Petition For Review Of Decision Of The Tax

Court Of The United States, filed with the clerk of said court October 11, 1944;

(16) Notice of filing of said petition and admission by the attorneys for said respondent of service of copy of said petition and of said notice, filed with the clerk of said court October 11, 1944;

(17) Statement Of Evidence, including petitioners' [546] exhibits Nos. 2, 3, 5 and 6 and respondent's exhibits Nos A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T and U referred to therein;

(18) Stipulation between counsel for said petitioners and counsel for said respondent regarding Exhibits B and C to the petitions to the Board of Tax Appeals of said petitioners, which exhibits were substituted in evidence for petitioners' Exhibits 1 and 4;

(19) Any and all orders of enlargement or extension of time for the preparation, certification, transmission and delivery of the records on said reviews; and not included in record

(20) This praecipe or designation of rental and the admission of service thereof.

.....
/s/ (Thomas A. J. Dockweiler)

whose post office address is
1035 L. N. Van Nuys Building
210 West Seventh Street
Los Angeles 14, California

.....
/s/ (James W. Bontems, C.P.A.)

whose post office address is
215 West Sixth Street
Los Angeles 14, California
Attorneys for said petitioners
George S. Gaylord and Gertrude H. Gaylord. [547]

Personal service of a copy of the foregoing Praecipe For The Record is hereby acknowledged this 13th day of November, 1944. Agreed to:

J. P. WENCHEL,

Chief Counsel,

Bureau of Internal Revenue;

B. H. NEBLETT,

Division Counsel

Bureau of Internal Revenue;

HAROLD D. THOMAS,

EARL C. CROUTER and

B. M. COON,

Special Attorneys,

Bureau of Internal Revenue.

By J. P. WENCHEL (C.A.R.)

Attorneys for said Commissioner. [548]

[Endorsed]: T.C.U.S. Filed Nov. 13, 1944.

The Tax Court of the United States
Washington

Docket No. 109138

GEORGE S. GAYLORD,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Docket No. 109273

GERTRUDE H. GAYLORD,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CERTIFICATE

I, B. D. Gamble, Clerk of The Tax Court of the United States do hereby certify that the foregoing pages 1 to 548, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praecipe in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of The Tax Court of the United States, at Washington, in the District of Columbia, this 23d day of November, 1944.

(Seal)

B. D. GAMBLE

Clerk,

The Tax Court of the United
States.

[Endorsed]: No. 10936. United States Circuit Court of Appeals for the Ninth Circuit. George S. Gaylord, Petitioner, vs. Commissioner of Internal Revenue, Respondent. Gertrude H. Gaylord, Petitioner, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record. Upon Petitions to Review a Decision of The Tax Court of the United States.

Filed November 29, 1944.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In The United States Circuit Court of Appeals
For The Ninth Circuit

Docket No. 10936

GEORGE S. GAYLORD,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

GERTRUDE H. GAYLORD,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

ADOPTION OF ASSIGNMENTS OF ERROR
INCLUDED IN PETITIONS FOR RE-
VIEW WITHIN TRANSCRIPT OF REC-
ORD AND DESIGNATION FOR PRINT-
ING ENTIRE TRANSCRIPT

To The Honorable Justices of the United States
Circuit Court of Appeals for the Ninth Circuit:

The above named petitioners George S. Gaylord and Gertrude H. Gaylord, by and through their undersigned attorney Thomas A. J. Dockweiler, do hereby adopt as their points on appeal the assignments of error included in the petitions for review of said petitioners within the transcript of record

in the above entitled causes heretofore filed with the clerk of said Circuit Court and said petitioners desire the record as certified to said clerk to be printed in its entirety and so designate for printing the entire transcript.

Dated this 2nd day of December, 1944.

THOMAS A. J. DOCKWEILER

Attorney for said petitioners,
George S. Gaylord and
Gertrude H. Gaylord.

Personal service of the foregoing Adoption of Assignments of Error Included in Petitions for Review Within Transcript of Record and Designation for Printing Entire Transcript is hereby acknowledged this 4th day of December, 1944.

J. P. WENCHEL,

Chief Counsel, Bureau of
Internal Revenue;

B. H. NEBLETT,

Division Counsel Bureau of
Internal Revenue;

HAROLD D. THOMAS and

B. M. COON,

Special Attorneys, Bureau of
Internal Revenue.

By SAMUEL O. CLARK, JR.

Attorneys for said Commis-
sioner.

[Endorsed]: Filed Dec. 11, 1944. Paul P.
O'Brien, Clerk.

No. 10936

IN THE
United States Circuit Court of Appeals
FOR THE NINTH CIRCUIT

GEORGE S. GAYLORD,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

GERTRUDE H. GAYLORD,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITIONERS' OPENING BRIEF.

THOMAS A. J. DOCKWEILER,
1035 Van Nuys Building, Los Angeles 14,
Attorney for Petitioners.

FILED

MAR 27 1945

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The Tax Court erred in determining that the trust was revocable during the years 1936 through 1939 and in failing to find and decide as a matter of fact and of law that said trust was at all times from its inception in 1935 an irrevocable trust.....	24
(a) The trust is not a "voluntary" trust within the meaning or purpose of Section 2280 as amended in 1931.....	26
(b) The original and unchanged understanding, purpose, intent and belief of the parties thereto that the trust was always to be irrevocable had the effect of supplying any Scrivener's omission to include in the original declaration of trust dated November 7, 1935, express words of irrevocability and therefore such declaration of trust must be deemed in any case, as of the time such trust became effective, corrected in such respect and read as though it did contain expression of irrevocability.....	36
(c) In any case sufficient and effective expression or declaration that the trust is irrevocable is found in each of the gift tax returns signed and made under oath by each of the trustors in 1936, shortly following upon and in connection with the trustor's making of such declaration of trust and in which gift tax returns the trust was referred to and a copy of the declaration of trust filed therewith as a part thereof.....	40

- (d) The execution by Mr. and Mrs. Gaylord, signed and acknowledged and made under oath by each of them of the declaration being a part of a certain declaration of trust dated November 7, 1935, which is dated that date but was not recorded until March, 1940, wherein they certify and declare that the trust provided for in said declaration was always intended and is intended by them to be and is and shall always be absolutely irrevocable, which statement was so made under oath by the trustors and trustees, Mr. and Mrs. Gaylord, long before any issue or controversy was intimated, suggested or raised by any tax authority based upon the claim that the trust was irrevocable and was so made out of an abundance of caution promptly upon omission in said declaration dated Nov. 7, 1935, of an expression of irrevocability being called to Mr. and Mrs. Gaylord's attention, is again a sufficient and effective expression or declaration relating back for all purposes to the very inception of the trust, that the trust always was and is irrevocable..... 51
- (e) The declaration of trust dated November 7, 1935, shows on its face that it was to be operative under laws of jurisdictions other than California; and under the law of every jurisdiction in the United States outside California the trust set forth in said declaration in the form there stated would, without more, at the time said declaration was executed, be irrevocable..... 53
- (f) Many of the operations and transactions of the trustees of the trust since its inception have been outside of California and in jurisdictions where the trust has always been absolutely irrevocable..... 55

(g) Under the laws of California the trust of the stock referred to in said declaration of trust dated November 7, 1935, formed by Mr. and Mrs. Gaylord for the benefit of their daughters and their living issue, has at all times since its inception in 1935 been valid in any case as an oral irrevocable trust of personal property which needed no writing, and the proceeds of the stock constituting the corpus of such trust, no matter how subsequently invested or in what form transmuted, always remain subject to such oral irrevocable trust. 58

II.

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III.

The Tax Court erred in determining that all income of the trust which was distributed by the trustees to and received by the beneficiaries of the trust in the years 1936 through 1939 was income of Mr. and Mrs. Gaylord and not of such beneficiaries. 68

IV.

The Tax Court erred in deciding, contrary to law and fact, that rents for the years 1938 and 1939 of the Texas real property belonging to the trust was income of a revocable trust and hence income of Mr. and Mrs. Gaylord and not of the beneficiaries of the trust. 68

iv.

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V.

The Tax Court erred in deciding, contrary to law and fact, that the basis for computing gain on the sales of Marathon Paper Mills Company common stock (with exception of 100 shares) was \$2.84276 per share instead of a minimum of \$8.21 per share as claimed by petitioners..... 69

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No. 10936

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

GEORGE S. GAYLORD,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

GERTRUDE H. GAYLORD,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITIONERS' OPENING BRIEF.

*To the Honorable United States Circuit Court of Appeals
for the Ninth Circuit and the Judges Thereof:*

Jurisdiction of This Court to Review Decision in Question

These are proceedings for review by the United States Circuit Court of Appeals for the Ninth Circuit of a decision of the Tax Court of the United States (hereinafter called Tax Court) entered August 4, 1944, determining against petitioner George S. Gaylord (hereinafter called Mr. Gaylord) certain deficiencies in his income taxes for the taxable years 1936, 1937, 1938 and 1939 [Transcript of the Record—hereinafter referred to as Tr.—pp. 274-275] and of a decision of the Tax Court determining

against petitioner Gertrude H. Gaylord (hereinafter called Mrs. Gaylord) certain deficiencies in her income taxes for the taxable years 1936, 1937 and 1939. [Tr. pp. 273-274.] Petitioners are individuals who at all times since prior to the year 1936 have been residents of Pasadena in Los Angeles County, California. The respondent (hereinafter called Commissioner) is the duly appointed, qualified and acting Commissioner of Internal Revenue. Petitioners filed with the Collector of Internal Revenue for the Sixth District of California, at Los Angeles, California, their respective individual returns of the income taxes with respect to which such deficiencies were so determined. Said district and the office of said Collector are located within the jurisdiction of the United States Circuit Court of Appeals for the Ninth Circuit. Jurisdiction of said Court to review said decisions is provided for in *Sections 1100, 1141, and 1142 of the United States Internal Revenue Code*.

Statement of the Case

On September 17, 1941, Commissioner mailed to petitioner Mr. Gaylord a notice of deficiency in which Commissioner advised Mr. Gaylord that the determination of his income liability for the taxable years 1936 through 1939 disclosed a deficiency of \$49,518.76, or \$17,835.82 for 1936, \$12,033.50 for 1937, \$10,442.62 for 1938 and \$9,206.82 for 1939. [Tr. pp. 44-61.] On November 10, 1941, Mr. Gaylord filed with the United States Board of Tax Appeals (now the Tax Court) his verified petition for redetermination of such deficiency [Tr. pp. 6-96]; to which petition Commissioner filed his answer December 9, 1941. [Tr. pp. 97-101.]

On September 17, 1941, Commissioner also mailed to petitioner Mrs. Gaylord, petitioner George S. Gaylord's

wife, a notice of deficiency in which Commissioner advised her that the determination of her income tax liability for the taxable years 1936 through 1939 disclosed a deficiency of \$8,043.63, or \$1,087.40 for 1936, \$4,925.01 for 1937, \$32.51 for 1938 and \$1,998.71 for 1939. [Tr. pp. 134-151.] On November 26, 1941, she filed with said Board her verified petition for a redetermination of such deficiency [Tr. pp. 101-187]; to which petition Commissioner filed his answer January 2, 1942. [Tr. pp. 187-191.]

As issues of fact and law involved in the cases made these petitions and answers were the same, except for differences in total amounts of money or value concerned, the Tax Court consolidated the two cases for hearing and they were heard together by that Court, the Honorable Bolon B. Turner, a Judge thereof, presiding, on April 2 and 3, 1943, at Los Angeles, California. [Tr. pp. 337 to 568.] On February 18, 1944, the Tax Court, by Judge Turner, promulgated its findings of fact and opinions deciding against Mr. and Mrs. Gaylord the issues of fact and law now brought up in their petitions for review, [Tr. pp. 192-216.] Though they moved March 17, 1944 for reconsideration by said Court of its determination, so announced, that (1) the income for the years 1936 through 1939 of the hereinafter referred to trust was taxable to Mr. and Mrs. Gaylord, and (2) the basis for computing gain on certain stock sales by them and said trust during said years was less than the value claimed by them, said Court denied such motion March 18, 1944. [Tr. pp. 223-249.] There followed the decisions, of which review is now sought, in which said Court determined against Mr. Gaylord a deficiency in his income tax of \$17,826.37 for 1936, \$12,029.07 for 1937, \$8,211.85 for 1938 and \$9,-

206.82 for 1939, and against Mrs. Gaylord a deficiency in her income tax of \$1,087.10 for 1936, \$4,922.60 for 1937, and \$1,998.19 for 1939. However, as Mr. Gaylord, after the Tax Court's decision and before filing his petition for review thereof, paid certain sums on deficiencies so found against him for 1937, 1938 and 1939, the present review proceedings concern as to him for those three years \$11,965.36 for 1937, \$8,074.13 for 1938 and \$7,925.35 for 1939. [Tr. pp. 276-277.] Issues as to deductions for losses sustained by petitioners on demolition of a building and loss to Mr. Gaylord from destruction of a pear orchard, which were before the Tax Court and are discussed in its findings of fact and opinions, are not involved in these present proceedings for review.

There are two principal questions now presented for review:

(A) Was said trust at any time during the years 1936 through 1939 irrevocable by the trustors thereof, Mr. and Mrs. Gaylord, or either of them and consequently the trust income for those years taxable to them?

(B) What was the basis for computing gain on certain stock sales made by Mr. and Mrs. Gaylord and said trust during those years?

(A) QUESTION OF REVOCABILITY OF THE TRUST.

As to this question the facts are undisputed and no evidence to the contrary was presented or offered by the Commissioner.

Mr. and Mrs. Gaylord were husband and wife at all times herein mentioned. [Tr. pp. 339, 542.] As issue of their marriage they have two daughters, Margaret Gaylord Ruppel (hereinafter called Mrs. Ruppel) and Gert-

rude Gaylord Bruce (hereinafter called Mrs. Bruce) both of whom are living. Margaret was born November 10, 1904, and married Albert Brunker in 1923. Two children, both now living, were born of this marriage, Barbara Brunker October 14, 1925, and Robert Henry Brunker June 3, 1928. Subsequently Margaret divorced Brunker and in 1931 married Frederick Ruppel. The other daughter, Gertrude, was born May 31, 1916, and on May 29, 1937, married Eugene L. Bruce. They have one child, Ann Bruce, who was born in April, 1938, and is living. [Mr. Gaylord's testimony, Tr. p. 353; Tax Court's Findings of Fact—hereinafter referred to as Findings—Tr. p. 195.]

Sometime prior to their executing the declaration of trust dated November 7, 1935, hereinafter referred to, it was mutually agreed between Mr. and Mrs. Gaylord that they would form an irrevocable trust for the uses and purposes and upon the terms and conditions set forth in such declaration and that Mr. Gaylord would contribute to the trust estate to be provided for in such declaration 5000 shares of Marathon Paper Mills Company common stock owned by him as his separate property and that Mrs. Gaylord would give to such trust estate 2000 shares of such stock owned by her as her separate property, each of such contributions being conditioned upon the other being so made to such trust. Accordingly, they told their attorney that they wanted to form such an irrevocable trust and instructed him to prepare therefor a declaration of trust. He thereupon prepared a declaration of trust dated November 7, 1935, which Mr. and Mrs. Gaylord signed about December 11, 1935, on which day they acknowledged before a notary in Los Angeles County, California, its execution. In connection with Mr. and Mrs. Gaylord's so signing and acknowledg-

ing such declaration of trust and at that time they were advised by their counsel that the trust was irrevocable. After being signed the instrument was left in their counsel's custody. Pursuant to their precedent agreement, Mr. Gaylord contributed his 5000 shares and Mrs. Gaylord her 2000 shares of Marathon Paper Mills common stock in the year 1935. Both of them in creating said trust (hereinafter referred to as the trust) proposed, intended and understood that they were forming an irrevocable trust of that stock and its proceeds for the uses and purposes and upon the terms and conditions set forth in such declaration and that neither they nor either of them had any power to revoke such trust or modify or change it in any manner. [Mr. Gaylord's testimony, Tr. pp. 339-340, 351, 353-354, 381, 541-542; Mrs. Gaylord's testimony, Tr. pp. 542-544; Findings Tr. pp. 195-196, 202.]

Upon acquisition for the trust by its trustees, with proceeds of sale of certain of the stock thus contributed, of real property in the jurisdictions hereinafter mentioned, the trustees of said trust had said declaration recorded September 23, 1937, in Los Angeles County, California, and in 1938 in Cameron, Hidalgo, Potter and Jim Wells Counties, Texas. [Mr. Gaylord's testimony, Tr. pp. 351-352; Findings, Tr. 197.] For such Texas recordings there was additional acknowledgment of execution of said declaration by Mr. and Mrs. Gaylord and certification thereon of such acknowledgment in Texas form on January 6, 1938, before the same notary who took their original acknowledgments. [Mr. Gaylord's testimony, Tr. p. 354.]

By stipulation of counsel and order of the Tax Court made at the hearing before it, the original of said declaration of trust dated November 7, 1935, which was received

in evidence [Mr. Gaylord's testimony, Tr. pp. 339-340, 359] was withdrawn, and the copy thereof set forth as Exhibit B in Mr. and Mrs. Gaylord's respective petitions then before that Court was substituted therefor with two minor corrections. [Tr. pp. 359-360; Stipulation, Tr. pp. 569-570.] Said declaration is set forth in full on pages 61 to 76, and again on pages 151 to 166, of the Transcript of the Record herein and is summarized in the present petitions for review. [Mr. Gaylord's Petition, Tr. pp. 282-285; Mrs. Gaylord's Petition, Tr. pp. 312 to 315.] According to its terms, the trust is to last as long as either Mrs. Ruppel or Mrs. Bruce is living and under thirty years old, and during its existence all of the trust's net income is to be distributed, in any event annually, to them, or, in case of the death of either of them leaving lawful issue, the latter. Upon termination of the trust its estate vests in Mrs. Ruppel and Mrs. Bruce or, if either of them fail to survive such termination, her lawful issue who may then be living. Though said declaration contained no statement that it was irrevocable, no right to change or revoke the trust was reserved.

In connection with the trust's creation and as part of the same transaction, Mr. and Mrs. Gaylord each personally signed and under date of February 3, 1936, executed a gift tax return for the calendar year 1935, which was filed in the office of the Collector of Internal Revenue at Los Angeles, California, March 10, 1936. Mr. Gaylord's said return included his contribution to the trust of his 5000 shares of Marathon Paper Mills stock mentioned in said declaration of trust, and Mrs. Gaylord's said return covered her 2000 shares of such stock appearing in said declaration of trust. In each such return specific reference was made to the trust and it was expressly declared that the "gift" represented by the aforementioned contribution

to the trust was made "By the creation of an irrevocable trust for the benefit of another." All entries in said returns are in Mr. Gaylord's own handwriting. [Mr. Gaylord's testimony, Tr. pp. 356-358, 360-363; Mrs. Gaylord's testimony, Tr. pp. 543-544; Mr. Gaylord's said Gift Tax Return, Petitioners' Exhibit 2, Tr. pp. 360A-360D; Mrs. Gaylord's Gift Tax Return, Petitioners' Exhibit 3, Tr. pp. 362A-362C; Findings, Tr. pp. 196-197.] With said returns there was filed with said Collector a copy of said declaration of trust. [See Respondent's Exhibit I, Fiduciary Return of Income of Mr. and Mrs. Gaylord, trustees, for calendar year 1936, Tr. p. 461; Mr. Gaylord's testimony, Tr. p. 381; Findings, Tr. p. 205.] The only trust to which reference was made in said returns was the trust provided for in said declaration of trust dated November 7, 1935. There was no other trust then in existence. [Mr. Gaylord's testimony, Tr. pp. 358, 360; Mrs. Gaylord's testimony, Tr. p. 544.] Mr. Gaylord, upon so filing his said return, paid \$2531.27 gift tax shown thereon and later, under date of December 28, 1936, paid an additional \$90.05 assessed on said return. No part of any tax so paid was ever refunded to Mr. Gaylord. [Mr. Gaylord's testimony, Tr. pp. 357-358, 381; Findings, Tr. p. 197.] Because of exemptions and exclusions no gift tax was payable by Mrs. Gaylord on her return. [Petitioners' Exhibit 3, Tr. pp. 362B-362C.]

In the beginning of the year 1940, long before any question was raised as to revocability or irrevocability of the trust, Mr. and Mrs. Gaylord, upon advice of counsel and out of abundance of caution, executed a *Declaration being a part of a certain declaration of trust dated November 7, 1935*, which was dated November 7, 1935, and acknowledged and sworn to by them under date of March 27, 1940, before a notary public in Los Angeles

County and recorded in that county March 28, 1940. In this instrument, after referring to the hereinbefore mentioned declaration of trust, dated November 7, 1935, Mr. and Mrs. Gaylord declared that the trust provided for in said declaration was always intended and is intended by them to be and is and shall always be absolutely irrevocable and that such further declaration is and is intended to be and shall always be a part of and taken with and construed as a part of said declaration of trust the same as though it had been physically incorporated in said declaration of trust. [Mr. Gaylord's testimony, Tr. pp. 363-365, 381.] This supplemental declaration, so acknowledged and sworn to in March, 1940, was received in evidence as Petitioners' Exhibit 4, but by stipulation of counsel and leave of Court Exhibit C of the petitioners' respective petitions to the United States Board of Tax Appeals was substituted for the original of said instrument and the latter was permitted to be withdrawn. Said Exhibit C is set forth on pages 76 to 80 and repeated on pages 166 to 170 of the Transcript of the Record.

The above mentioned 7000 shares of Marathon Paper Mills common stock referred to in said declaration of trust dated November 7, 1935, were subsequently sold by Mr. and Mrs. Gaylord as trustees of the trust as follows: 4000 in 1936, 1600 in 1937, 1000 in 1938 and the remaining 400 in 1939. Such sales are shown in the fiduciary returns of the trust income for these years by Mr. and Mrs. Gaylord as such trustees. [Mr. Gaylord's testimony, pp. 354-355, 381; Respondents' Exhibit I, Fiduciary Return of Income of Mr. and Mrs. Gaylord for calendar year of 1936, Tr. pp. 460-465; Respondent's Exhibit J, said trustees' Fiduciary Income Tax return for calendar year 1937, Tr. pp. 465-471; Respondent's Exhibit

K, said trustees' Fiduciary Income Tax return for calendar year 1938, Tr. pp. 471-480; Respondent's Exhibit I., said trustees' Fiduciary Income Tax returns for calendar year 1939, Tr. pp. 480-489; Findings, Tr. pp. 197-198.]

The certificates for such shares were kept in a California safe deposit box in the name of the trustees of the trust until they commenced to sell such shares, when, from time to time, they sent certificates therefor to the Harris Trust & Savings Bank, at Chicago, Illinois, for convenience of delivery upon sale. All said 7000 shares were sold and delivered upon sale either in Chicago, Illinois, or the City of New York, New York. It was only in those two places that sales of such shares were made by the trustees. All such sales were for cash, all of which was deposited by the trustees in the Harris Trust & Savings Bank, Chicago, Illinois. [Mr. Gaylord's testimony, Tr. p. 355; Findings, Tr. p. 197.]

The funds of the trust in the years 1936, 1937 and 1938 were kept on deposit in the names of the trustees as such trustees with said Harris Trust & Savings Bank in Chicago, Illinois. In the years 1939, 1940 and 1941 all of the trust's bank accounts were kept with that bank and with Bankers Trust Company in New York. [Mr. Gaylord's testimony, Tr. pp. 355, 381; Findings, p. 197.]

During 1938, \$94,000 of the proceeds of sales theretofore made of Marathon Paper Mills stock of the trust was invested by its trustees in and by way of purchase for the trust, of improved income producing real properties in Texas, located in the cities of Amarillo, Alice, McAllen and Harlingen. Title to such property so purchased was taken in the names of Mr. and Mrs. Gaylord as such trustees. This property has ever since been owned and held by such trustees for the benefit of the trust and

its beneficiaries. Mr. Gaylord's testimony, Tr. pp. 352-353, 363, 381; Findings, Tr. p. 197.]

All rents belonging to the trust received by its trustees from such Texas real property in 1938 and 1939 were included in the fiduciary returns by said trustees of the trust's income for those years. The net rents from said real property so included amounted to \$3859.00 for 1938 and \$6370.67 for 1939. [Mr. Gaylord's testimony, p. 353; Respondent's Exhibit K, Tr. pp. 472, 477; Respondent's Exhibit L, Tr. pp. 481, 486; Findings, Tr. pp. 197-198.]

Each of the two beneficiaries of the trust, Mrs. Ruppel and Mrs. Bruce, who were then entitled to all the net income thereof in equal shares, included in her individual income tax return for each of the years 1936, 1937, 1938 and 1939, her one-half share of the trust's net income for that year shown in the fiduciary return of the trustees of the trust for that year, including her share of the trust's net income from the Texas real property rents, and paid to the Collector of Internal Revenue at Los Angeles, California, with whom said individual and fiduciary returns were filed, income tax on her one-half of the net income of the trust. Such income included her share of taxable capital gain, as shown by said fiduciary returns, on the above mentioned sales in 1936 through 1939 of the 700 shares of trust's Marathon Paper Mills stock. [Mr. Gaylord's testimony, Tr. p. 353; Respondent's Exhibit I, Fiduciary Return of Income of said trust for 1936, Tr. pp. 461-465; Respondent's Exhibit J, Fiduciary Return of Income of said trust for 1937, Tr. pp. 465-471; Respondent's Exhibit K, Fiduciary Return of Income of said trust for year 1938, Tr. pp. 471-480; Respondent's Exhibit L, Fiduciary Return of Income of said trust for

year 1939, Tr. pp. 481-487; Respondent's Exhibit M, Mrs. Ruppel's Individual Income Tax Return for 1936, Tr. p. 508; Respondent's Exhibit N, Mrs. Ruppel's individual Income Tax Return for 1937, Tr. pp. 509-512; Respondent's Exhibit O, Mrs. Ruppel's Individual Income Tax Return for year 1938, Tr. pp. 513-517; Respondent's Exhibit P, Mrs. Ruppel's Individual Income Tax Return for year 1939, Tr. pp. 519-522; Respondent's Exhibit Q, Mrs. Bruce's Individual Income Tax Return for the year 1936, Tr. pp. 523-525; Respondent's Exhibit R, Mrs. Bruce's Individual Income Tax Return for the year 1937, Tr. pp. 527-531; Respondent's Exhibit S, Mrs. Bruce's Individual Income Tax Return for the year 1938, Tr. pp. 531-536; Respondent's Exhibit T, Mrs. Bruce's Individual Income Tax Return for the year 1939, Tr. pp. 537-540.]

On the foregoing facts respondent Commissioner determined and contended before the Tax Court that the trust was revocable by Mr. and Mrs. Gaylord, or either of them, at all times during the years 1936 through 1939 and, consequently, under the provisions of *Section 22 (a)* or *Section 166 of the Revenue Acts of 1936 and 1938* and/or the same sections of Internal Revenue Code, and that all income of the trust for those years, which in those years had been distributed by the trustees to the beneficiaries Mrs. Ruppel and Mrs. Bruce constituted income of Mr. and Mrs. Gaylord in the relative proportions of their respective contributions to the trust, that is, $\frac{2}{7}$ ths to Mrs. Gaylord, because she had contributed 2000 of the 7000 shares of Marathon Paper Mills Company stock to the trust, and $\frac{5}{7}$ ths to Mr. Gaylord, because he had contributed the other 5000 shares of such 7000 shares forming the original corpus of the trust, and, accordingly,

that Mr. Gaylord was chargeable with the following amounts of the trust's net income: For 1936, \$31,284.44; for 1937, \$23,620.76; for 1938, \$14,446.25; and for 1939, \$18,001.89 [Notice of Deficiency dated Sep. 17, 1941, Tr. pp. 46-54, 57-58; Findings, p. 194] and Mrs. Gaylord with these amounts of the trust's net income: For 1936, \$12,516.36, for 1937, \$9,449.31; and for 1939, \$7,201.17 [Notice of Deficiency dated Sep. 17, 1941, Tr. pp. 136-144, 148-149; Findings, p. 194.] On the contrary, petitioners contended to the Commissioner and before the Tax Court, and still maintain, that the trust is and has always been irrevocable and that none of its income was ever taxable to either Mr. or Mrs. Gaylord.

(B) QUESTION AS TO COMPUTING GAIN ON STOCK SALES.

In addition to the sales made by the trust in the years 1936 through 1939 of Marathon Paper Mills stock belonging to it, Mr. Gaylord sold shares of such stock then owned by him as his separate property as follows: In 1936, 4950; in 1937, 2800; in 1938, 3300; and in 1939, 2362 [Mr. Gaylord's testimony, pp. 366, 381; Respondent's Exhibit A, Mr. Gaylord's Individual Income Tax Return for 1936, Tr. pp. 383-384, 387-388; Respondent's Exhibit B, Mr. Gaylord's Individual Income Tax Return for 1937, Tr. pp. 392, 399; Respondent's Exhibit C, Mr. Gaylord's Individual Income Tax Return for 1938, Tr. pp. 405, 408, 415-417; Respondent's Exhibit D, Mr. Gaylord's Individual Income Tax Return for 1939, Tr. pp. 422, 424, 430, 431] and Mrs. Gaylord also sold the following shares of such stock then owned by her as her separate property as follows: In 1937, 2100; and in 1939, 500 [Tr., Mr. Gaylord's testimony, pp. 366, 381; Respondent's Exhibit E, Mrs. Gaylord's Individual Income Tax Return for 1937, Tr. pp. 441-446]; Respondent's Exhibit H,

Mrs. Gaylord's Individual Income Tax Return for 1939, Tr. pp. 455-456, 458-459.] The 2000 shares contributed by Mrs. Gaylord to the trust in 1935 had been received by her as a gift from Mr. Gaylord in 1930 [Mr. Gaylord's testimony, Tr. pp. 373-374] and the 2600 shares of such stock sold by her as her separate property in 1937 and 1939 had been given to her by Mr. Gaylord in February, 1932 [Findings, Tr. p. 211.]

It is conceded that all 7000 shares belonging to the trust and constituting the original corpus thereof and said additional 2600 shares belonging to Mrs. Gaylord have the same basis for computing gain on sale thereof which they had when they belonged to Mr. Gaylord before he gave to Mrs. Gaylord or contributed to the trust any of such shares. All of the Marathon Paper Mills Company stock sold by the trustees or Mr. or Mrs. Gaylord in the period 1936 to 1939 has the following history:

On July 1, 1917, Mr. Gaylord owned 337 shares (which, purchased at various times from previous to March 1, 1913, to July 1, 1917, cost him \$34,436.50) and his partner, H. S. Clinedinst (hereinafter called Clinedinst) owned 337 shares of a total 726 shares of common stock of Menasha Carton Company, the remaining 52 shares belonging to other individuals. Clinedinst also owned all of the stock of Menasha Printing Company. These two businesses were across the street from each other in Menasha, Wisconsin. Clinedinst desired to consolidate or merge the assets and businesses conducted by these two corporations into a new corporation with Mr. Gaylord as its manager. For that purpose an agreement was entered into between Clinedinst and Mr. Gaylord for such consolidation or merger (hereinafter referred to as "consolidation") of the two companies, which resulted in the

Menasha Printing and Carton Company. The agreement provided, among other things, that Mr. Gaylord should acquire sufficient stock of the new corporation to bring his holdings therein up to 40% of its outstanding stock. [Mr. Gaylord's testimony, Tr. pp. 366-367, 369, 381; Findings, Tr. pp. 206-207.]

For convenience in determining the respective proportion of interest in the new Menasha Printing and Carton Company to be received by each of the stockholders of Menasha Carton Company and Menasha Printing Company (but not the real values involved going into and resulting from such consolidation) an appraisal was made at the time, by competent appraisal company, of the tangible assets of the Menasha Carton Company and the Menasha Printing Company, and the values shown by such appraisal plus the "quick assets" of the combining companies was the gauge used for determining as between each of the stockholders of these two companies his proportion of interest in the new company. [Mr. Gaylord's testimony, Tr. pp. 367-370, 566; Findings, p. 207.]

The consolidation was effected in August, 1917, as of July 1, 1917. In it Mr. Gaylord received for his 337 shares of Menasha Carton Company stock and his promissory note for \$152,161.11 dated August 30, 1917, payable to Clineinst's order 3 years after date with interest at 6% per annum (which note was paid in full in 1924) 1975 shares of the common and 410 shares of the preferred stock of the new company, Menasha Printing and Carton Company. The par value of said 1975 shares of common and 410 shares of preferred stock was equal (approximately) in amount to the principal sum of said promissory note plus the value of the proportionate part of the tangible assets of the two combined companies as

so appraised and their "quick assets" to which Mr. Gaylord's interest in the Menasha Carton Company entitled him. His 337 shares of that company then had a real and actual value far in excess of that determined by such appraisal of tangible assets plus such "quick assets," which determination was resorted to only for the purpose of fixing the *proportion* and not the full or true value of the respective participation in the new Menasha Printing and Carton Company of the several owners of the two companies which were being consolidated into it. For such purpose only no account was taken of goodwill, earning capacity or value as a profitable going concern of either of the companies. The profits of the Menasha Carton Company for the first seven months of 1917 were \$56,000, and of the Menasha Printing Company for the first six months of 1917, \$187,000 in round figures. Combined profits at the end of 1917 for these two concerns operated separately for the first six months of that year and for the new company for the last six months of 1917 were \$315,000 in round figures. Determination of value of the stock of the Menasha Carton Company and the Menasha Printing Company from capitalization of such current earnings at ten times the amount thereof, a conservative rate, and taking into consideration all pertinent factors or elements such as good will, earning capacity and worth of the businesses as profitable, going concerns, results in a substantially higher value for such stock than that indicated by value of tangible assets plus "quick assets" only. Such determination demonstrates a fair market value of at least \$350,000 for Mr. Gaylord's said 337 shares of Menasha Carton Company at the time of such consolidation. [Mr. Gaylord's testimony, Tr. pp. 367-368, 369-372, 373, 374-375, 381, 562, 563-564, 566; Findings, 207-208.]

In making the consolidation the appraised value of the physical assets plus book value of the "quick assets" of the Menasha Carton Company was determined to be \$186,000, and of the Menasha Printing Company, \$774,000, a total of \$960,000. [Gaylord's testimony, Tr. pp. 370-373, 566; Findings, Tr. p. 207.] For all assets of these two corporations, including good will, earning capacity and value as going concerns, the new corporation, Menasha Printing & Carton Company, issued 5000 shares common and 4600 shares preferred stock, all of the par value of \$100 per share. [Findings, pp. 207-208.] Of the \$186,000 value of tangible and "quick assets" of the Menasha Printing Company \$86,338.89 was allocated to Mr. Gaylord's 337 shares of stock of that company. [Mr. Gaylord's testimony, Tr. pp. 367, 370-372; Petitioners' Exhibit 5, Tr. p. 372A; Findings, Tr. p. 208.]

Though the exchange of his 337 shares of Menasha Carton Company for stock in the new corporation resulted in taxable gain to him, Mr. Gaylord, through inadvertence and mistake, did not report in his income tax return for 1917 any income on such exchange. [Tr. pp. 377-378; Findings, Tr. p. 209.]

In 1922 or 1923 Mr. Gaylord purchased the remaining interest of Clinedinst in the Menasha Printing and Carton Company. In the meantime all preferred stock issued in the 1917 consolidation had been retired. During the interval between such consolidation and October 31, 1927, Mr. Gaylord sold to employees some small lots of his common stock of Menasha Printing and Carton Company. In 1925 he received a 100% stock dividend on the stock of that company then held by him. As of date October 31, 1927, he owned 3357 shares of said stock. [Mr. Gaylord's Testimony, pp. 374-375; Exhibits F, G and H

to petitioners' respective petitions to United States Board of Tax Appeals, Tr. pp. 92-96, 182-187; Findings, p. 209.]

Of the stock so held 350 shares had been transferred by Mr. Gaylord in 1925 to his brother C. W. Gaylord for 432 shares Robert Gaylord, Inc. stock. Thereafter C. W. Gaylord, wanting to reacquire the latter for use in connection with reorganization of Robert Gaylord, Inc., Mr. Gaylord proposed to sell such shares to C. W. Gaylord for \$300,000 but the offer was not accepted and thereafter C. W. Gaylord suggested that the previous exchange of 350 shares of Menasha Printing and Carton Company for 432 shares of Robert Gaylord, Inc. stock be cancelled and the parties restored to the position they would have been in if the exchange had never been made. This was done and Mr. Gaylord returned to C. W. Gaylord the 432 shares of Robert Gaylord, Inc. stock and received back 352 shares of Menasha Printing and Carton Company stock, each of the parties paying over to the other all dividends received by him on the stock involved in the exchange standing in his name during the interval. These exchanges between Mr. Gaylord and C. W. Gaylord were taxable, although, through inadvertence and mistake, not considered so by Mr. Gaylord at the time. [Mr. Gaylord's Testimony, Tr. pp. 379-381; Exhibit H to petitioners' respective petitions to Board of Tax Appeals, pp. 95-96, 186; Findings, pp. 209-210.]

On October 31, 1927, Menasha Products Company (such then being the name of Menasha Printing and Carton Company) was merged with Marathon Paper Mills Company. In this tax-free reorganization Mr. Gaylord received 6728 shares of the Marathon Paper Mills Company stock, and \$1,038,000 in face value of Marathon

Paper Mills Company 5% bonds in exchange for his 3,357 shares of common stock of Menasha Products Company. In 1929 the last mentioned shares were split 4 for 1. [Mr. Gaylord's Testimony, pp. 374-375, 379; Exhibit H to petitioners' respective petitions to Board of Tax Appeals, pp. 95-96, 185-186; Findings, p. 210.]

The fair market value of Mr. Gaylord's stock in the Menasha Carton Company which he contributed to the reorganization of the Menasha Carton Company and the Menasha Printing Company into the Menasha Printing and Carton Company made as of July 1, 1917, was on that date at least \$350,000.00. [Gaylord's Testimony, pp. 563-564, 566, 367-370.] Said Exhibit G to said petitions [Gaylord's Testimony, Tr. pp. 95, 185-186; Findings, p. 210.]

As a result of the foregoing history of the Marathon Paper Mills Company stock sold by the trust and Mr. Gaylord through 1936 to 1939 and Mrs. Gaylord in 1936, 1937 and 1939, they computed gain thereon on a basis of \$8.21 per share and income tax was paid accordingly by Mr. and Mrs. Gaylord and the beneficiary daughters of said trust. (See fiduciary returns of income of the trust for the years 1936 to 1939, and income tax returns of Mr. Gaylord individually for the years 1936 to 1939, of Mrs. Gaylord for the years 1936, 1937 and 1939 and of Mrs. Ruppel and Mrs. Bruce individually for the years 1936 to 1939 in Transcript of the Record hereinbefore cited.)

But respondent Commissioner determined and contended before the Tax Court [Notice of Deficiency dated Sep. 17, 1941, Exhibit A to Mr. Gaylord's petition to Board of Tax Appeals, Tr. pp. 47-51, 52-53, 54, 56-59; Notice of Deficiency dated Sept. 17, 1941, Exhibit A to Mrs.

Gaylord's petition to said Board [Tr. pp. 137-141, 144, 148-149] that for the purpose of computing capital gains realized through the years 1936 to 1939 by the trust and by Mr. Gaylord and by Mrs. Gaylord in the years 1936, 1937 and 1939, from the sales of its, his and her respective shares of Marathon Paper Mills Company common stock, the statutory basis for computing gain on each such sale was \$2.83542 per share, and, consequently, as to such sales, there were the following gains realized:

On sale in 1936 by the trust of 4000 shares, \$21,498.32, of which 30%, or \$6,449.50, is to be taken into account under *Section 117(a) of the Revenue Act of 1936*;

On sale in 1936 by Mr. Gaylord of 4950 shares, \$26,604.17, of which 30%, or \$7,981.25, is so to be taken into account;

On sale in 1937 by the trust of 1600 shares, \$8,599.33, of which 30% or \$2,579.80, is so to be taken into account;

On sale in 1937 by Mr. Gaylord of 2800 shares, \$15,048.82, of which 30%, or \$4,514.65, is so to be taken into account;

On sale in 1937 by Mrs. Gaylord of 2100 shares, \$11,286.62, of which 30%, or \$3,385.99, is so to be taken into account;

On sale in 1938 by the trust of 1000 shares, \$5,374.58, of which 50%, or \$2,687.29, is to be taken into account under *Section 117(b) of the Revenue Act of 1938*;

On sale in 1938 by Mr. Gaylord of 3300 shares, \$17,736.11, of which 50%, or \$8,868.06, is so to be taken into account;

On sale in 1939 by the trust of 400 shares, \$2,149.83, of which 50%, or \$1,074.92, is to be taken into account under *Section 117(b) of the Internal Revenue Code*:

On sale in 1939 by Mr. Gaylord of 2362 shares, \$12,694.77, of which 50%, or \$6,347.38, is so to be taken into account; and

On sale in 1939 by Mrs. Gaylord of 500 shares, \$2,687.29, of which 50%, or \$1,343.64, is so to be taken into account.

To the contrary, petitioners contend to the Commissioner, and before said Court, and still maintain, that the statutory basis for computing gain on each such sale was a minimum of \$8.21 per share as claimed on their individual income tax returns and the fiduciary returns for the trust filed for the years above mentioned.

Respondent Commissioner offered no evidence to controvert the petitioners' evidence that Mr. Gaylord's 337 shares of Menasha Carton Company had at the time of its merger with the Menasha Printing Company a fair market value of at least \$350,000.

On their petitions for redetermination of the hereinbefore referred to deficiencies, The Tax Court held with respect to the subjects and issues involved in these present proceedings for review by the Circuit Court of Appeals for the Ninth Circuit.

(1) that the trust was revocable during the taxable years 1936 through 1939 and that of the trust income for those years 5/7ths was taxable to Mr. Gaylord and 2/7ths to Mrs. Gaylord [Findings, pp. 205-206]; and

(2) that the basis for computing gain on the sales by the petitioners individually and by the trustees of the

trust of Marathon Paper Mills Company common stock was (except as to 100 shares purchased by Mr. Gaylord in 1933 for \$1,700, as to which there is no dispute) \$2.84276 per share instead of \$8.21 per share as claimed by them. [Tax Court's Decisions, Tr. pp. 273-275.] Accordingly, the Tax Court determined the deficiencies hereinbefore stated of which petitioners complain.

Specifications of Error.

Mr. Gaylord in his petition for review of the decision of the Tax Court against him and Mrs. Gaylord in her petition for review of the decision of that court against her set forth certain assignments of error [Mr. Gaylord's said petition, Tr. pp. 299-302; Mrs. Gaylord's said petition, Tr. pp. 329-332] which have been adopted as their points of appeal [Adoption of Assignments of Error, Tr. pp. 578-579.] As already indicated, such assignments of error and points on appeal present only two principal questions for review:

(A) Whether the trust hereinbefore referred to was revocable, and

(B) What was the correct basis for computing gain on the sales of the Marathon Paper Mills Company common stock. Consequently the Specifications of Error may be succinctly stated as follows:

I.

The Tax Court erred in determining that the trust was revocable during the years 1936 through 1939 and in failing to find and decide as a matter of fact and of law that the trust was at all times from its inception in 1935 an irrevocable trust.

II.

The Tax Court erred in concluding that estoppel is not an issue in this case and in deciding that respondent

Commissioner is not estopped to claim that the trust was revocable.

III.

The Tax Court erred in determining that all of the income of the trust which was distributed by the trustees to and received by the beneficiaries of the trust in the years 1936 through 1939 was income of Mr. and Mrs. Gaylord and not of such beneficiaries.

IV.

The Tax Court erred in deciding, contrary to law and fact, that the \$3,859.95 rent for the year 1938 and the \$6,370.67 rent for the year 1939 of the Texas real property belonging to the trust was income of a revocable trust and hence income of Mr. and Mrs. Gaylord and not of the beneficiaries of the trust.

V.

The Tax Court erred in deciding, contrary to law and to fact, that the basis for computing gain on the above referred to sales of Marathon Paper Mills Company common stock (with exception of 100 shares) was \$2.84276 per share instead of a minimum of \$8.21 per share as claimed by petitioners.

VI.

The Tax Court erred in failing to find and decide that under Section 202(a) of the 1926 Revenue Act the cost to Mr. Gaylord of the 352 shares of Menasha Printing and Carton Company stock which he received from his brother C. W. Gaylord in 1927 in exchange for 432 shares of Robert Gaylord, Inc. was the fair market value of such shares of Menasha Printing and Carton Company in August, 1927.

The foregoing will now be considered in order.

I.

The Tax Court Erred in Determining That the Trust Was Revocable During the Years 1936 Through 1939 and in Failing to Find and Decide as a Matter of Fact and of Law That Said Trust Was at All Times From Its Inception in 1935 an Irrevocable Trust.

Were it not for the 1931 amendment to *Section 2280 of the California Civil Code* any contention that the trust provided for in the declaration of trust dated November 7, 1935, was revocable would be utterly lacking any plausible support in law. It is only because of that amendment that specious color is lent to respondent's position and the Tax Court's holding that the trust is irrevocable. But *Section 2280 of the California Civil Code*, as amended in 1931, is inapplicable to the trust herein involved because

- (a) the trust is not a "voluntary trust" within the meaning or purpose of *Section 2280* as so amended;
- (b) the original and unchanged understanding, purpose, intent and belief of the parties thereto that the trust was always to be irrevocable had the effect of supplying any scrivener's omission to include in the original declaration of trust dated November 7, 1935, express words of irrevocability and therefore such declaration of trust must be deemed in any case, as of the time such trust became effective, corrected in such respect and read as though it did contain an expression of irrevocability;
- (c) in any case sufficient and effective expression or declaration that the trust is irrevocable is found in each of the gift tax returns signed and made under oath by each of the trustors to the Collector of Internal Revenue in 1936 shortly following

upon and in connection with the trustors' making of such declaration of trust and in which gift tax returns the trust was referred to and a copy of the declaration of trust filed therewith as a part thereof;

(d) the execution by the trustors, signed and acknowledged and made under oath by each of them, of the DECLARATION BEING A PART OF A CERTAIN DECLARATION OF TRUST DATED NOVEMBER 7, 1935, which is dated that date but was not recorded until March, 1940, wherein they certify and declare that the trust provided for in said declaration of trust was always intended and is intended by the trustors and trustees therein to be and is and shall always be absolutely irrevocable, which statement was so made under oath by the trustors and trustees, Mr. and Mrs. Gaylord, long before any issue or controversy was intimated, suggested or raised by any tax authority based upon the claim that the trust was irrevocable and was so made out of abundance of caution promptly upon omission in said declaration dated November 7, 1935, of an expression of irrevocability being called to Mr. and Mrs. Gaylord's attention, is again a sufficient and effective expression or declaration relating back for all purposes to the very inception of the trust, that the trust always was and is irrevocable;

(e) said declaration of trust shows on its face that it was intended to be operative under the laws of jurisdictions other than California, and under the law of every jurisdiction in the United States outside of California the trust set forth in said declaration in the form there stated would, without more,

at the time said declaration was executed, be irrevocable;

- (f) many of the operations and transactions of the trustees of the trust since its inception have been outside of California and in jurisdictions where the trust has always been absolutely irrevocable; and
- (g) under the laws of California the trust of the stock referred to in said declaration of trust dated November 7, 1935, formed by Mr. and Mrs. Gaylord for the benefit of their daughters and their living issue has at all times since its inception in 1935 been valid in any case as an oral irrevocable trust of personal property which needed no writing, and the proceeds of the stock constituting the corpus of such trust, no matter how subsequently invested or in what form transmuted, always remain subject to such oral irrevocable trust.

These several points above mentioned under the first specification of error will now be considered:

- (a) *The Trust Is Not a "Voluntary" Trust Within the Meaning or Purpose of Section 2280 as Amended in 1931.*

The trust here involved was not created by and did not result from the act or declaration of one person alone. As shown by the uncontradicted evidence and as substantially found by the Court, it was created pursuant to a mutual understanding and agreement theretofore had between Mr. Gaylord and his wife, Gertrude H. Gaylord, whereby he, in consideration of her agreement to contribute to an irrevocable trust to be created and provided

for the uses and purposes and upon the terms and conditions later expressed in the declaration of trust dated November 7, 1935, 2000 shares of Marathon Paper Mills Company common stock then separately owned by her, such shares to be part of the trust estate provided for in such trust, agreed to contribute to such trust as part of such trust estate in trust for the same uses and purposes and upon the same terms and conditions 5000 shares of said stock owned by him as his separate property, and she, on her part agreed, that in consideration of Mr. Gaylord's agreement to make such contribution of such 5000 shares, she would make such contribution of such 2000 shares. It was pursuant to such agreements that the declaration of trust was prepared for and executed by them and Mr. Gaylord contributed his 5000 shares to such trust and Mrs. Gaylord contributed her 2000 shares.

Section 2280 of the California Civil Code, as amended in 1931, reads as follows:

"Unless expressly made revocable by the instrument creating the trust, every voluntary trust shall be revocable by the trustor by writing filed with the trustee. When a voluntary trust is revoked by the trustor, the trustee shall transfer to the trustor its full title to the trust estate. Trusts created prior to the date when this act shall become a law shall not be affected thereby."

That under the circumstances and facts in evidence herein the trust created by Mr. and Mrs. Gaylord was not a "voluntary trust" or revocable within the meaning of *Section 2280* of said Civil Code, see the case of *Touh v. Santa Cruz County Title Co.* (1937) 20 Cal. App. (2d) 395, at 497; 67 Pac. Rep. (2d) 404, at pages 405 to 406.

which, so far as known to petitioners, is the only decision of an appellate court in the State of California construing the phrase "voluntary trust" as used in *Section 2280*.

Until such 1931 amendment (an obscure bit of legislation which was not given the general publicity usually accorded to important changes in statute the law of California, even as to "voluntary trusts," with respect to revocability was the same as that of other states of the Union, that is, such trusts could not be revoked by the trustor unless by the very terms of the trust he reserved a power of revocation. In the absence of any such reserved power of revocation or modification the trust was irrevocable and could not be modified.

Restatement of the Law of Trusts, as adopted and promulgated by the American Law Institute. Vol. II, Sections 330 to 332, and California Annotations to said restatements and said sections.

As is plain from its wording, said *Section 2280*, as amended, applies in any case, only to "voluntary" trusts. Though *Section 2216 of the California Civil Code*, which reads "A voluntary trust is an obligation arising out of a personal confidence reposed in, and voluntarily accepted by, one for the benefit of another," purports to define a "voluntary trust," in doing so it fails of its purpose, for it seeks to explain the word to be defined, "voluntary," by use of another form of the very same word, "voluntarily." The expression "voluntary trust" was first used in said *Section 2280* when it was redrafted by the amendment of 1931. As enacted in 1872 and as it remained until that amendment that section read:

"A trust cannot be revoked by the trustor after its acceptance, actual or presumed, by the trustee and

beneficiaries, except by the consent of all of the beneficiaries, unless the declaration of trust reserves a power of revocation to the trustor, in which case the power must be strictly pursued."

As *Section 2216 of the California Civil Code*, above quoted, in itself throws no light on the meaning to be accorded to the word "voluntary" used in the definition there given of a "voluntary trust" the District Court of Appeals of the State of California in construing the expression "voluntary trust" appearing in said *Section 2280*, as so amended in 1931, resorted to the generally accepted meaning of the word "voluntary" as adopted in equity *jurisprudence*, that is, "without consideration; without valuable consideration; gratuitous, as a *voluntary conveyance*."

Black's Law Dictionary (3d Edition, 1933) page 1823.

Bouvier's Law Dictionary (1897).

Touli v. Santa Cruz Title Co. (1937) 20 Cal. App. (2d) 495, 497; 67 Pac. (2d) 404, 405-406.

The court in the *Touli* case last cited, speaking of the use of the word "voluntary" in *Section 2280*, as amended, said:

"Webster's New International Dictionary under the heading 'voluntary-law' gives this definition: 'Acting, or done, of one's own free will without valuable consideration, acting, or done, without any present legal obligation to do the thing done.' It was in the latter sense that the word 'voluntary' was used in the amended section, otherwise it would not have been coupled with the word 'revocable' without reservation." (20 Cal. App. (2d) at 497; 67 Pac. (2d) at 406.)

Hence the court there held:

“It must follow, therefore, that when section 2280 was drafted to permit the revocation of a ‘voluntary’ trust, that expression *was not used in the broad sense found in section 2216, but in the restricted sense of a trust created freely and without a valuable consideration or legal obligation.*” (Same page. Italics inserted.)

This decision, which is the only one found construing the phrase ‘voluntary trust’ appearing in *Section 2280*, is directly to the point, first, that a trust formed for a valuable consideration or created as a result of a legal obligation is not within the scope and operation of *Section 2280* and therefore such trust cannot be revoked unless expressly made revocable; *second*, that the definition of a “voluntary trust” appearing in *Section 2216 of the California Civil Code* has no bearing on the phrase “voluntary trust” as used in the 1931 amendment to *Section 2280* of the same code; and *third*, that the word “voluntary” in *Section 2280* is not there used, as the Tax Court in its opinion erroneously thought [Findings, Tr. p. 201] in the sense of something done of one’s own free will and as “an act of choice.” Though the *Touli* case concerned a deed of trust given to secure a loan, the California court’s decision that the “voluntary trust” referred to in *Section 2280* was not a “voluntary trust” as defined in *Section 2216* is not dictum but an essential part of its determination. That court, because of reliance placed by plaintiffs and respondents *Touli* on the amendment to *Section 2280* and the language of *Section 2216*, which gave literal support to their contention that the trust deed there involved was within the scope and meaning of *Section 2280*, was compelled to construe the ambiguities

of that amendment and ascertain just what the phrase "voluntary trust" used therein really meant; and its interpretation of the California law is obviously at variance with the views expressed by the Tax Court as to how the California statute should be construed.

In passing it may be observed that although by *Section 2217 of the California Civil Code* an involuntary trust is defined to be "one which is created by operation of law" it does not follow that all other trusts are "voluntary" in the sense in which such word is used in said *Section 2280*. As above indicated by judicial decision in California, the word "voluntary" has more than one meaning. It may refer not only to the willingness of a person to accept a trust in distinction to the imposition by law upon him unwillingly or without his consent of an involuntary trust, so-called, but as well to the characterization of a trust in equity jurisprudence where a trust willingly accepted by a trustee may or may not be a "voluntary" trust; for a trust, no matter how willingly or voluntarily accepted by the trustee, will not be considered in equity jurisprudence a voluntary trust if it is founded upon a valuable consideration. Manifestly in California law there is more than one kind of voluntary trust. In the proceedings at bar the only question as to whether or not the trust provided for in the declaration of trust dated November 7, 1935, is or is not voluntary is whether such trust is or is not voluntary within the precise meaning and scope of a particular statute, *Section 2280 of the California Civil Code*. According to the judicial interpretation and construction of that section and of the words "voluntary trust" there used, the trust now discussed, created by Mr. and Mrs. Gaylord, is not a voluntary trust because it is

grounded in a valuable consideration and on an agreement between the trustors made with such consideration.

As to all matters pertaining to this trust, it may also be observed that the principles of equity jurisprudence are those which govern; for the subject of trusts is peculiarly the province of that field of law.

Section 1605 of the California Civil Code provides that

“Any benefit conferred, or agreed to be conferred, upon the promisor, by any other person, to which the promisor is not lawfully entitled, or any prejudice suffered, or agreed to be suffered, by such person, other than such as he is at the time of consent lawfully bound to suffer, as an inducement to the promisor, is a good consideration for a promise.”

The term “good consideration” as employed in this section is not used in the ancient technical sense, as that of blood or natural affection, but as equivalent to the term “valuable consideration.”

Aden v. City of Vallejo (1903) 139 Cal. 165, 168;
72 Pac. 905, 906.

Tested by the definition of a valuable consideration given in *Section 1605 of the California Civil Code*, as construed in the *Aden case* above cited, there was a good and valuable consideration moving from Mrs. Gaylord to Mr. Gaylord for his joining in the trust and executing the declaration thereof and contributing his 5000 shares to the trust, and, on the other hand, there was a good and valuable consideration moving from Mr. Gaylord to Mrs. Gaylord for her joining in the trust and executing such declaration and contributing her 2000 shares to the trust. It was not created without a valuable consideration pass-

ing to each of the trustors therein named or without a legal obligation definitely and irrevocably binding each of them to the other, but was supported by and founded on a good and valuable consideration as statutorily and judicially defined in California. Each of said parties was acting independently with respect to his or her own property and estate. Before such mutual understanding and agreement had between them neither was obligated to give up in trust or otherwise any part of the stock so owned, but by such agreement each did agree, to such party's own prejudice, to part with valuable property by transferring the same to an irrevocable trust on stipulation that the other party would do likewise. There is here not one trustor but there are two independent trustors who pursuant to an understanding between them surrendered and gave up, irrevocably according to their common intention, something of great value which neither of them was obligated to part with. If there is not manifest a good and valuable consideration in this situation then the definition of such consideration hereinbefore given is meaningless. What the parties did is a typical example of what would constitute a good and valuable consideration, and the trust which resulted therefrom is consequently founded upon and created with such consideration and, the principle laid down in the *Touli* case governing, is not within the letter or spirit of said *Section 2280*.

The Tax Court ignores all of this and disregards the legal effect of the undisputed precedent mutual agreement of Mr. and Mrs. Gaylord for the creation by them of an irrevocable trust. It treats the situation as if each of them was acting alone in forming the trust and making his or her contribution thereto without ever being ob-

ligated to the other to do so. But the fact that the trust was created only pursuant to a previous mutually onerous and binding agreement cannot be disregarded. It was this contract which changed what might otherwise have been a voluntary trust (as that term is used in equity jurisprudence and in the amendment to *Section 2280 of the California Civil Code*) into a trust created for or founded upon a good and valuable consideration. The circumstance that from the standpoint of the beneficiaries the transaction was a gift to them is immaterial. It is the contractual relationship of the trustors and what they did as between them which is determinative of the conclusion that the trust is not such a "voluntary trust."

While on this subject, another reason may be noted why said *Section 2280* is not applicable to the trust here involved: It is the circumstance that such section contemplates a revocation "by the trustor by writing filed with the trustee," or a situation where the trustor is, as it were, outside the trust and the trustee is a person or party different from and other than the trustor. The "writing filed with the trustee" is the only method of revocation provided for in said *Section 2280* of a voluntary trust there referred to. This method would not be applicable to the trust in the case at bar where the trustors are the same persons as the trustees Mr. and Mrs. Gaylord.

The 1931 amendment to *Section 2280* is in derogation and limitation of the common law of trusts under which where a power of revocation, change or modification is not expressly reserved the trust is *ipso facto* irrevocable and for a trust to be irrevocable there is no need of the instrument creating the trust to so state. However, that statutory amendment apparently has very limited applica-

tion, because under long established law of California a trust of personal property, such as the stock which formed the original corpus of the trust in this case, may, as hereinafter pointed out, be purely oral and needs no writing, no matter how valuable the trust estate may be.

It may be further remarked that a careful reading of said *Section 2280* as so amended reveals another peculiarity which may provide a clue to the purpose of the legislation embodied in the 1931 amendment. It will be observed that elsewhere in *Title VIII*, treating of trusts, in *Part IV of Division Third* of the California Civil Code, where a personal pronoun is used with reference to a trustee it is always the masculine personal pronoun "he" or "his," not the neuter pronoun "its," which makes its first appearance in the amendment to *Section 2280* wherein the masculine personal pronoun customarily used elsewhere in the title is not used. Having in mind certain situations which may be deemed to have required remedy, it may be concluded that the purpose of the amendment was especially to govern voluntary trusts (as construed and defined by judicial decision) created with corporate trustees, such as banks or trust companies. To such trustees the neuter pronoun "its" would be appropriate. Such trusts made with such corporate trustees by laymen trustors not skilled in law are very common. But the layman trustor, through ignorance of the requirement that unless the instrument expressly reserves to him the right of revocation, modification or change the trust would not be revocable, may frequently be at disadvantage when, it not being his intention to create an irrevocable trust, he later learns that his omission to include in the instrument provision for such revocation has by law deprived him of that power. Such situation, involving layman's

ignorance of law when dealing with a bank or trust company versed in its rights and obligations, might well have been inducement to the legislature to enact the referred to amendment. It would give such a trustor, who without good or valuable consideration creates such a voluntary trust with a corporate trustee, intending in so doing to have the right to revoke the trust when he saw fit, opportunity to do so. His original intent to have the right to revoke would be given effect. The amendment of 1931 to said *Section 2280* was doubtless aimed at this objective.

- (b) *The Original and Unchanged Understanding, Purpose, Intent and Belief of the Parties Thereto That the Trust Was Always to Be Irrevocable Had the Effect of Supplying Any Scrivener's Omission to Include in the Original Declaration of Trust Dated November 7, 1935, Express Words of Irrevocability and Therefore Such Declaration of Trust Must Be Deemed in Any Case, as of the Time Such Trust Became Effective, Corrected in Such Respect and Read as Though it Did Contain Expression of Irrevocability.*

Even if it be assumed, for purpose of argument only, that the trust provided for in said declaration of trust dated November 7, 1935, is a "voluntary trust" within the scope and meaning of said *Section 2280* (an assumption justified neither by the fact nor the law) failure of the declaration of trust to contain express provision that the trust there provided for was or should be irrevocable was due solely to error, oversight, mistake or ignorance of the trustors Mr. and Mrs. Gaylord, as their mutual intention always was to create and provide for an irrevocable trust.

The Tax Court expressly found that

"When requesting counsel to prepare the trust instrument, Gaylord told him that he and Mrs. Gaylord desired to form an irrevocable trust with respect to the stock. At the time the petitioners signed the trust instrument they were advised by counsel that the trust was irrevocable * * *. On February 4, 1936, the petitioners filed gift tax returns, prepared by Gaylord, for 1935, in which they reported the creation of an irrevocable trust and the transfer thereto of the above mentioned shares of stock in Marathon Paper Mills Co." [Findings, Tr. p. 196.]

"The record shows, and we have found as a fact, that the petitioners had in mind the making of a complete and irrevocable grant to trust. We also think it apparent that their counsel who drew the trust instrument so understood, and the respondent has conceded that when counsel drew the instrument he did not know of the 1931 amendment to Section 2280." [Findings, Tr. p. 202.]

For many years, ever since 1872, *Section 1640* of the same Civil Code in which the above mentioned *Section 2280* is found has provided that

"When, through fraud, mistake, or accident, a written contract fails to express the real intention of the parties, such intention is to be regarded, and the erroneous parts of the writing disregarded."

And in this connection may be noted the provisions of *Section 3399* of the same code that

"When, through * * * a mutual mistake of the parties * * * a written contract does not truly express the intention of the parties, it may be revised, on the application of a party aggrieved, so

as to express that intention, so far as it can be done without prejudice to rights acquired by third persons, in good faith and for value.”

and the provisions of *Section 3401* of the same code that “In revising a written instrument, the court may inquire what the instrument was intended to mean, and what were intended to be its legal consequences, and is not confined to the inquiry what the language of the instrument was intended to be.”

These code sections, which similarly have been in force without change since the enactment of the codes, are declaratory of part of the well-settled principles administered in equity where there is question of mistake of fact or of law. The intentions of the parties to a contract are to be fulfilled and any mistake of such parties which would defeat such intentions should, in equity, be corrected, so as to carry them into effect, whether it be a mistake of law or a mistake of fact and without reference to the principle that mistake or ignorance of the law does not excuse.

Holmes v. Anderson (1928) 90 Cal. App. 276, pages 281 *et seq.*; 265 Pac. 1010, 1012 *et seq.*

Though the above quoted *Section 1640* and *3401* of the Civil Code were cited to the Tax Court in argument and brief [Motion for Reconsideration, Tr. p. 233] of petitioners, it completely ignored these plain legal mandates and no reference thereto is found in its findings or opinions.

In a leading case on the construction and application of the above mentioned *Section 1640* of the Civil Code,

Harding v. Robinson (1917), 175 Cal. 534, 541 to 542; 166 Pac. 808, 811, the California Supreme Court, in its opinion, after quoting said section, proceeds:

"In this it is to be noted that the mistake arises from a failure of the contract to express the real understanding and agreement of all parties to it. That failure may arise through fraud, but this character of fraud is not fraud perpetrated to induce the contract but a fraud whereby the terms as agreed upon by the parties are suppressed or misrepresented *precisely as they may be omitted or misstated by error or oversight called in that section 'mistake or accident'.*" (175 Cal. at page 541; 166 Pac. at page 811.) (Italics inserted.)

Further on in the same paragraph it is explained that the aforementioned exceptions are to be applied where it appears that there is

"mutuality of the mistake, that the minds of the contracting parties met, that they agreed upon a certain thing which was to have been embodied in their contract, and that by a mistake it was either fraudulently or inadvertently omitted." (175 Cal. at page 542; 166 Pac. at page 811.)

The parol evidence rule itself, as expressed in *Section 1856 of the California Code of Civil Procedure*, is expressly made inapplicable "Where a mistake of imperfection of the writing is put in issue." The inapplicability of the parol evidence rule to situations where the contract through mistake or accident fails to express the real intention of the parties is further noted in *Rottman v. Hevener* (1921), 54 Cal. App. 474, 478, 202 Pac. 329, 331; and *Estes v. Delpech* (1925), 73 Cal. App. 643, 646-647, 238 Pac. 1085, 1086.

Reformation or revision has the effect of causing the instrument as reformed to read and operate as of its original date. Reformation does not proceed upon the theory that a written contract may be altered or modified by extraneous parol testimony, but upon the theory that equity will conform a written contract which fails to express the intention of the parties to the actual one entered into by them.

Gardner v. California Guarantee etc. Co. (1902),
137 Cal. 71, 69 Pac. 844.

And where basis for revision on ground of mutual mistake is present, it is obvious that the parties themselves without resort to court may reform the contract in accordance with their prime intentions and if so reformed it speaks as of its original date.

Ward v. Waterman (1890), 85 Cal. 488, 24 Pac.
930;

22 Cal. Jur., page 748;

53 C. J., page 1055.

Applying the principles expressed in the above mentioned code sections and cases and similar authorities to the declarations of trust dated November 7, 1935, it would be a species of fraud or inequity if because of any lack in the trust declaration of express statement that the trust was irrevocable—a statement which was inadvertently omitted—either of the trustors Mr. Gaylord or his wife, who had mutually agreed upon an irrevocable trust, should seek to take advantage of the mistake which consisted in such inadvertent omission and because of it try to revoke the trust. If through their mistake or that of counsel who drafted the declaration of trust there was omission in the latter of expression of irrevocability such

mistake would not at any time make the trust revocable, and there is no rule of law which would prevent the trustors from insisting upon their mutual true original and unchanged intention and having it recognized and effectuated.

But the Tax Court not only ignored *Sections 1640 and 3401 of the California Civil Code* but held, contrary to California law, that *Section 3399* of that code, above quoted from, had no application to the trust at bar. [Findings, Tr. pp. 202 to 204, 205.] The argument advanced by the Tax Court for this holding is that "section 3399 has no application to a purely voluntary deed," citing *Enos v. Stewart*, 138 Cal. 112, 70 Pac. 1005, and *Robertson v. Melville*, 60 Cal. App. (not Cal. as cited by the court) 354, 212 Pac. 723. [Findings, Tr. pp. 203-205.] From the supposed non-application of *Section 3399* to a "voluntary deed" the Tax Court apparently draws the conclusion that such code section is likewise inapplicable to petitioners' agreement and trust. But this conclusion does not follow.

In the first place, the original declaration of trust dated November 7, 1935, is more than a deed or conveyance such as was involved in the *Enos* or *Robertson* case. Such declaration is also a contract and evidence of a contract between the petitioners, the two trustors and trustees therein named, as between themselves and with respect to the beneficiaries designated in the trust. Though as to such beneficiaries it had the aspect of a gift, the trust itself was not formed by a single donor acting alone but was the object and result of a precedent agreement or contract by which two persons, neither of whom could theretofore have been compelled by the other to make such

gift, did bind himself and herself legally and effectively to the other to make it, thereby creating a legal obligation or burden in favor of his or her co-trustor. It is not the resulting gift to the daughters and their issue which should be considered but rather the mutual and reciprocal agreements of their parents. Analogy is found in the well-known pledge to contribute to a charity: the latter is the donee of a gift yet the pledge may be enforceable legally as between the multiple pledgors.

In the second place, *Enos v. Stewart* involved the special situation of a deed of gift from a mother to her daughter in disinheritance of the former's husband. Though the Tax Court in its decision of the case at bar quotes at length from the opinion of Commissioner Cooper in the *Enos* case [Findings, Tr. pp. 203 to 204] that part of the Commissioner's opinion which is omitted from the midst of such quotation is not without its pertinent significance and explains why the court there declined to reform as against the surviving husband heir the deed to the daughter. Quoting from the omitted portion:

"The equities of respondent are, at least, equal to those of appellant. It is the dictate of equity and natural justice that the property of a wife dying without issue should go in part to her surviving husband. This was certainly the view of the legislature in enacting our statute of distributions, for in such case it makes the husband the owner of one-half the property. If this be so, then equity would say to appellant that she should allow his respondent one-half of his property." (138 Cal. 112 at p. 114, 70 Pac. at p. 1006.)

The *Enos* case lays down no rule and expresses no principle which in any manner militates against petitioners'

position in the proceedings at bar, that by virtue of said *Section 3399* the trust created by them is and should be considered, in accordance with their original and unchanged understanding, absolutely irrevocable by either of them or any party whomsoever.

In the *Robertson* case the District Court of Appeal affirmed a judgment reforming the deed there involved in accordance with the original intention of the parties to the contract in pursuance to which the deed was executed. Presiding Judge Finlayson in the opinion in that case, after saying

“It may be conceded that equity will not reform a purely voluntary deed, for one who accepts another’s bounty cannot be heard to say that something else should be given” (citing *Enos v. Stewart*)

continues:

“But a valuable consideration, however small, will support a conveyance; and a consideration which will support a conveyance ordinarily is sufficient to entitle the grantee to maintain an action to correct a mutual mistake in the deed.” (60 Cal. App. 354, at 356-357; 212 Pac. 723, at 725.)

In the case at bar there was under *Section 1605 of the California Civil Code*, hereinbefore quoted, and its settled construction such a valuable consideration supporting the mutual agreement or contract of the petitioners pursuant to which the gift in trust was made.

In the third place, in holding said *Section 3399* inapplicable to the trust the Tax Court overlooks the circumstance that it is not any of the beneficiaries of the trust, the donees, who were before the court insisting upon ap-

plication of that section but it is the two contracting parties themselves, the petitioners herein, both of whom invoked the statute's corrective protection. There is here no case of hearing "one who accepts another's bounty" saying "that something else should be given." Those who speak here are not donees but donors and contractors, each of whom was by reason of onerous legal obligation, founded upon a valuable consideration, bound to the other to create the irrevocable trust and make his or her contribution thereto.

In the fourth place, if wrongfully and contrary to the undisputed facts of the case at bar as to the inception of that trust and the subsequent acts and conduct of the petitioners and others with respect thereto, the original declaration of trust be regarded merely as a "voluntary" deed or conveyance, as such term is used in equity jurisprudence, then it still does not follow that it is not subject to reformation or will not be regarded at all times as reformed and reading in accordance with the positive original intention of the parties thereto. See Annotation in 69 *A. L. R.* at page 423, *et seq.* There (on page 424) it is declared with respect to the supposed general rule that a court of equity will not reform a conveyance which is voluntary and based on no consideration:

"As is apparent from an examination of the cases which follow, however, no such broad and sweeping rule can be laid down on this subject. Whether or not equity will reform a voluntary conveyance depends upon who seeks the reformation and against whom it is sought, as well as upon other circumstances. For example, it is well settled * * * that the grantor is entitled to a reformation of his voluntary deed as against the grantee * * * In

its present form and without radical limitations, the general statement set out above, taken with all its implications, is not only valueless as a guide in the determination of any given case, but is positively misleading."

Nor, while on this subject of interpreting and applying the trust according to the true intent and purpose of the parties thereto, should those maxims of jurisprudence enacted into law by *Section 3509 of the California Civil Code* be overlooked:

"When the reason of a rule ceases, so should the rule itself" (*Section 3510, of the same code*);

"One must not change his purpose to the injury of another" (*Section 3512 of the same code*)

as would be the case if Mr. and Mrs. Gaylord or either of them sought to revoke the trust with resultant injury to its beneficiaries:

"No one should suffer by the act of another" (*Section 3520 of the same code*)

as would happen if the trustors and beneficiaries of the trust were penalized for the inadvertent omission of a scrivener, contrary to their intention and purpose, in drafting an instrument pertaining to the trust;

"For every wrong there is a remedy" (*Section 3523 of the same code*)

which would not be if *Sections 1640, 3399 and 3401 of the same Civil Code* were not to apply to correct or rectify a patent and undisputed error of omission in the drafting of the original declaration of trust:

"The law respects form less than substance" (*Section 3528 of the same code*)

which would not be so if the amendment to *Section 2280* were applied arbitrarily to subvert the trustors' intent and purpose and the force and effect of the facts relating to the administration of the trust, or to single out the original declaration dated November 7, 1935, as the sole instrument to be relied upon in disregard of the written declarations of irrevocability contained in the gift tax returns executed at a somewhat later date but as a part of the same trust transaction;

“That which ought to have been done is to be regarded as done in favor of him to whom, and against him from whom, performance is due.” (*Section 3529 of the same code*)

and according to which the beneficiaries of this trust have had at all times the right to insist upon adherence by the trustors to their original intent and purpose of creating and administering for such beneficiaries an irrevocable trust; and

“Contemporaneous exposition is in general the best” (*Section 3535 of the same code*)

a principle of large applicability to the instant case.

(c) *In any case sufficient and effective expression or declaration that the trust is irrevocable is found in each of the gift tax returns signed and made under oath by each of the trustors in 1936, shortly following upon and in connection with the trustors' making of such declaration of trust and in which gift tax returns the trust was referred to and a copy of the declaration of trust filed therewith as a part thereof*

Though the Tax Court expressly finds as follows:

“On February 4, 1936, the petitioners filed gift tax returns, prepared by Gaylord, for 1935, in which

they reported the creation of an irrevocable trust and the transfer thereto of the above mentioned shares of stock in Marathon Paper Mills Co., sometimes herein-after called Marathon. Mrs. Gaylord reported the 2000 shares of stock contributed by her as having a value of \$50,000, but, by reason of exclusions and the specific exemption taken, she reported no gift tax liability. Gaylord reported total gifts in the amount of \$140,278.08, of which \$125,000 was reported as the value of the 5000 shares of Marathon stock contributed by him to the trust. After taking exclusions totaling \$15,000 and a specific exemption of \$50,000, his return showed a gift tax liability of approximately \$2,500, which he paid. Subsequently in 1936 Gaylord paid an additional gift tax of approximately \$100.00 with respect to said return." [Findings, Tr. pp. 196 to 197]

and also, in connection with the Tax Court's opinion on petitioners claim of estoppel,

"that petitioners in 1936 filed their gift tax returns for 1935, in which they referred to the trust as an irrevocable trust, that the tax shown on the returns was paid and has never been refunded" [Findings, Tr. p. 205]

and though Mr. Gaylord testified that at the time he made his above referred to gift tax return there was then in existence no trust other than the trust created by the declaration dated November 7, 1935, to which he was a party or to which he had contributed, and that said trust was the only trust in existence so far as he was concerned, and that it was the trust he referred to in answering "Yes" in the return to the question therein "By the creation of an irrevocable trust for the benefit of another" [Tr. pp. 357 to 358, 360] and though Mrs. Gaylord testi-

fied that there was no other trust in existence at the time she signed her gift tax return than the trust of November 7, 1935 [Tr. p. 544] and though none of the aforementioned evidence was in any manner impugned or contradicted the Tax Court, as indicated by silence in its opinion, completely overlooked or ignored the effect of the express statements in writing, signed and sworn to by Mr. and Mrs. Gaylord in their respective gift tax returns, made and filed in connection with their creation of the trust provided for in their declaration of trust dated November 7, 1935, and as a part of the same transaction, that such trust was irrevocable. Not only was the trust of which the terms, conditions, uses and purposes were set forth in said declaration, the only trust then in existence and the only one to which by any possibility any such reference expression or designation in those gift tax returns of irrevocability could pertain, but, to put the matter beyond doubt, there was furnished to the Collector of Internal Revenue with each of said gift tax returns a copy of the declaration of trust dated the 7th day of November, 1935. Whatever may have been the effect prior to the making and filing of such gift tax returns of any omission in the declaration of trust dated November 7, 1935, of an express statement that the trust provided for therein was irrevocable, such omission was cured for all purposes by the written expressions of irrevocability incorporated in such gift tax returns made shortly (within less than two months) after the signing and acknowledgment on December 11, 1935, by Mr. and Mrs. Gaylord of the declaration dated November 7, 1935, and in connection with and as a part of the same transaction in which the trust was set up.

In any event such gift tax returns, so signed and sworn to and expressing the intent and purpose of the trustors

and trustees, Mr. and Mrs. Gaylord, that such trust was irrevocable, should, if not considered a part of the original transaction setting up the trust, be regarded as a correction, amendment or modification of the provisions of the trust as set forth in the declaration dated November 7, 1935, making such trust at all times thereafter irrevocable, if the same were not irrevocable from its very inception. Obviously, if the trust as originally established was under any theory revocable by the petitioners or either of them, it would also be subject to subsequent change or modification by them, and if they in writing did so change and modify such trust by declaring the same to be irrevocable it would, in such case, be irrevocable from that time on. Viewed, therefore, as a subsequent correction, change, modification or addition to the original trust, the formal declaration in writing by Mr. and Mrs. Gaylord, set forth in their gift tax returns, that the trust was irrevocable, served to make such trust irrevocable in any case from the time of the making of such statement of irrevocability.

That the declaration or instrument creating the trust may consist of more than one document or of any number of documents, which need not be contemporaneous in time nor have any particular formality see

Spalding v. Spalding (1925), 75 Cal. App. 569, 580; 243 Pac. 445;

Lynch v. Rooney (1896), 112 Cal. 279; 44 Pac. 565;

Taber v. Bailey (1913), 22 Cal. App. 617; 135 Pac. 975;

65 C. J., p. 275 (Trusts, Section 57.).

The declaration of trust need not be contained in the instrument which transfers the legal title but may be set out in a separate instrument or several papers or instruments

provided they are related to and connected with each other and when construed together evidence the existence of the trust.

65 C. J., p. 262 (Trusts, Section 42).

Where there are two or more instruments creating, defining or relating to a trust they may be construed together to effectuate the intention of the creator, as where one instrument incorporates another by reference.

65 C. J., p. 500 (Trusts, Section 247).

Moreover, where the trust is insufficiently declared and afterwards the declaration is made sufficient by the trustor, the subsequent declaration relates back to the original. There is no particular formality required or necessary in the creation of a trust. Where the existence of a trust is proved, proof by way of such recitals as those in the gift tax returns above mentioned, no matter how late in time, will relate back to the creation of the trust.

Union Trust Company of Pittsburgh v. McCaughn
(D. C. E. D. Penn., 1927) 24 Fed. (2d) 459,
462.

No set form of words is necessary to create a trust.

Tabor v. Bailey (1913). 22 Cal. App. 617, 620;
135 Pac. 975.

That the irrevocable character of the trust created by them was in the minds of Mr. and Mrs. Gaylord when they made their income tax returns needs no argument in support and is emphasized by the circumstances that the entries in those returns were made by Mr. Gaylord in his own hand. In view of their original and unchanged intention to create an irrevocable trust and their understanding that they had formed such a trust, it is immaterial that

when they made, signed, verified and filed their gift tax returns, neither Mr. nor Mrs. Gaylord anticipated the need of any additional declaration of irrevocability.

(d) *The execution by Mr. and Mrs. Gaylord, signed and acknowledged and made under oath by each of them of the DECLARATION BEING A PART OF A CERTAIN DECLARATION OF TRUST DATED NOVEMBER 7, 1935, which is dated that date but was not recorded until March, 1940, wherein they certify and declare that the trust provided for in said declaration was always intended and is intended by them to be and is and shall always be absolutely irrevocable, which statement was so made under oath by the trustors and trustees, Mr. and Mrs. Gaylord, long before any issue or controversy was intimated, suggested or raised by any tax authority based upon the claim that the trust was irrevocable and was so made out of an abundance of caution promptly upon omission in said declaration dated November 7, 1935, of an expression of irrevocability being called to Mr. and Mrs. Gaylord's attention, is again a sufficient and effective expression or declaration relating back for all purposes to the very inception of the trust, that the trust always was and is irrevocable.*

However, at no time prior to early in the year 1940 did either Mr. or Mrs. Gaylord have any idea other than that the trust was absolutely and for all time irrevocable. It was only on question being raised by their counsel in the early part of 1940 and because of it that the supplemental DECLARATION BEING A PART OF A CERTAIN DECLARATION OF TRUST DATED NOVEMBER 7, 1935, was prepared, signed, sworn to and acknowledged. [Mr. Gaylord's testimony, Tr. pp. 363 to 365.]

The Tax Court expressly found that it was at the instance of their counsel who drafted it as soon as he learned of the 1931 amendment to *Section 2280 of the California Civil Code* that the petitioners on March 27, 1940, signed and acknowledged such supplemental instrument and after so signing and acknowledging left it with their counsel, and that thereafter it was recorded in Los Angeles and Calaveras counties, California, on March 28, 1940, and May 14, 1940, respectively. [Findings, Tr. pp. 198 to 199, 202.] Except for a quotation from its provisions, no other reference is made by the Tax Court in its Findings and Opinions to this supplemental declaration or to the fact that it was under oath and made in good faith by the trustors and trustees of the trust and is bona fide evidence of their original and continuing intent and purpose to create an irrevocable trust in 1935, an intent and purpose with which all their acts have at all times since the trust's inception been consistent. Although, in view of all facts and circumstances hereinbefore related, it was not necessary to have had made and recorded in March, 1940, such supplemental statement reaffirming and redeclaring the trustors' and trustees' original and never changed intention that the trust was and should be forever irrevocable, abundant caution dictated such course. The existence of the trust in 1935 having been proven, expression of irrevocability by way of such recitals as those in such supplemental declaration, no matter how late in order of time, will relate back for all purposes to the creation of the trust.

Union Trust Company of Pittsburgh v. McCaughn,
above cited.

Incidentally, such supplemental statement was never recorded in Texas or elsewhere outside of California for

the simple but sufficient reason that outside the latter jurisdiction the original declaration of trust dated November 7, 1935, was, in form as written and without more, sufficient under any circumstances and for all purposes to evidence the creation in 1935 of an irrevocable trust on the terms and conditions and for the uses and purposes set forth in that declaration.

(c) The declaration of trust dated November 7, 1935, shows on its face that it was to be operative under laws of jurisdictions other than California, and under the law of every jurisdiction in the United States outside California the trust set forth in said declaration in the form there stated would, without more, at the time said declaration was executed, be irrevocable.

A reading of the trust declaration itself shows this to be true and that neither the use of that instrument nor the operation of the trust was ever intended to be limited to California. Not only is no such limitation expressed in or to be implied from the document itself and not only are the trustee's powers under the trust sufficiently broad to permit of investment of the trust's funds and its operation anywhere within or without California, but the very fact that The Northern Trust Company, of Chicago, Illinois, was named in said declaration as successor trustee indicates that the trust therein provided for was intended to be nation-wide in scope, and since such trust in form so declared would be irrevocable everywhere outside of California it must be assumed that it was also intended by the trustors to be irrevocable within that state.

The Tax Court in its Findings and Opinions makes no mention of the fact that The Northern Trust Company, a corporation foreign to California, was named in the

declaration dated November 7, 1935, nor of the fact, in undisputed evidence [Mr. Gaylord's testimony, Tr. pp. 355, 381] that no proceeds of sale of the Marathon Paper Mills stock of the trust were ever kept in or came to California except such thereof as were invested in California real estate.

That said declaration of trust, in the form in which it was then written and without the expressions of irrevocability contained in the gift tax returns and in the supplemental declaration, was sufficient to create, an irrevocable trust in jurisdictions outside of California see

Bogert, The Law of Trusts and Trustees (1935), Vol. 4, Sec. 993, page 2891, and cases there cited; and

Restatement of the Law of Trusts, as adopted and promulgated by the American Law Institute (1935), Sections 330 and 331;

and as to Illinois,

Massey v. Huntington (1886), 118 Ill. 80; 7 N. E. 269;

Trubey v. Pease (1909), 240 Ill. 513; 88 N. E. 1005;

Hubbard v. Buddemaier (1928), 328 Ill. 76; 159 N. E. 229;

and as to New York,

Marvin, et al v. Smith, et al, (1871), 46 N. Y. 571;

Gillman v. McArdle (1885), 99 N. Y. 451; 2 N. E. 464;

Smith v. Title Guarantee & Trust Co. (1942), 287 N. Y. 500; 41 N. E. (2d) 72;

and as to Texas,

Monday v. Lance (1899), 92 Texas 428; 49 S. W. 516.

(f) Many of the operations and transactions of the trustees of the trust since its inception have been outside of California and in jurisdictions where the trust has always been absolutely irrevocable.

The Tax Court not only appears to have overlooked the effect of the extent and scope of the operation of the trust as revealed in and indicated by the trust declaration of November 7, 1935, itself, but as well to have disregarded the effect of the acts and conduct of the trustees under the trust in jurisdictions outside of California where the trust has always been irrevocable.

First, there is the matter of the investments in Texas real property and the rents therefrom. While the Tax Court does note in its findings that

"In 1938 the trustees made certain purchases of real estate situate in Texas, totaling about \$90,000, and in connection therewith had the trust instrument recorded in four counties in that state" [Findings, Tr. p. 197]

it completely failed to take cognizance of the undisputed fact that under Texas law, as shown by such authorities as above cited, and others which could be adduced, the trust as set forth in the declaration dated November 7, 1935, was, without more, absolutely irrevocable in Texas and that, its law governing as to the real property there located belonging to the trust, the rents of such property included in the 1938 and 1939 fiduciary returns of income for the trust should in any case be treated as income of an irrevocable trust which was distributed by the trustees, in the years in which it was received, to the beneficiaries and was chargeable to the latter and under no circumstance to the trustors. No mention of these rents is made anywhere in the Tax Court's Findings or Opinions.

Secondly, there is the matter of the sales of Marathon Paper Mills stock made by the trustees in Illinois and New York. Though Mr. Gaylord testified positively and without contradiction that "all of which sales took place, of the entire 7000 shares, in the City of Chicago, Illinois, and the City of New York, New York" [Mr. Gaylord's testimony, Tr. p. 355] the Tax Court in its Findings and Opinions makes no reference to the place of sale but simply states that "For convenience in making delivery upon sale, certificates were sent from time to time to a bank in Chicago, in which the proceeds of all sales were deposited in an account in the names of the petitioners as trustees" [Findings, Tr. p. 197].

Thirdly, there is the undisputed fact that all cash funds of the trust in the years 1936, 1937 and 1938, were kept in the names of Mr. and Mrs. Gaylord as trustees under the declaration of trust dated November 7, 1935 with Harris Trust & Savings Bank, Chicago, Illinois, and in the year 1939 all of the bank accounts the trust were kept with that bank and with Bankers Trust Company, of 16 Wall Street, New York, New York. [Mr. Gaylord's testimony, Tr. p. 355, 381.] The only reference by the Tax Court in its Findings and Opinions to the places of deposit of the trust funds in the years mentioned is as just above quoted.

As there is no jurisdiction outside California where it would even be possible to question the irrevocable character of this trust during the years 1936 through 1939, and as the trustees' acts in disposing of trust assets without California and investing their proceeds serve to mark them and such investments as belonging to an irrevocable trust (the acts of the trustees being subject to the laws of the jurisdiction in which the same were performed) and as all original assets of the trust, the 7,000

shares of Marathon Paper Mills stock, were under the trust sold by its trustees in Illinois and New York (in which jurisdictions the trust was then irrevocable) and the proceeds of such sales and the trust's bank accounts were maintained in the last two mentioned states; it follows that even though it could possibly be argued that the stock originally contributed to the trust came to it as to a revocable trust, the trustees' conduct in dealing with those shares in other jurisdictions in which the trust was also intended to operate and in which the same was at all times irrevocable converted those shares and all proceeds thereof, in whatever form the same might be in the future, into assets of an irrevocable trust.

A bank account is, of course, nothing more than a chose in action, a contract, and such contracts are ordinarily governed by the law of the place where they are made and intended to be performed. The trustees, by transacting business under a trust which in form was sufficient to create—and, indeed, was at all times intended to create—an irrevocable trust in the jurisdictions (Illinois and New York) in which such contracts (bank accounts) were made, emphasized the trust's irrevocability; for they so contracted and did business with the information, belief and knowledge that they were acting for a trust irrevocable under the laws of those jurisdictions.

In the years 1936 through 1939 the only assets of this trust were proceeds of the sales of the above mentioned stock and properties acquired for the trust by investment of some of those proceeds. As the latter, by reason of the dealings had by the trustees with respect thereto and to such stock in jurisdictions where the trust was irrevocable, had been impressed with the character of belonging to

such a trust, the investment of such proceeds in any jurisdiction, even in real estate in California, could not affect or change their status as belonging to an irrevocable trust but would pass it on to property so acquired with such proceeds. All such property would then be held by the trustees in an irrevocable trust on the terms and conditions and for the uses and purposes set forth in said declaration dated November 7, 1935. Removal over state lines of trust assets representing proceeds of such original stock sales would not change the character of such assets as belonging to an irrevocable trust.

(g) *Under the Laws of California the Trust of the Stock Referred to in Said Declaration of Trust Dated November 7, 1935, Formed by Mr. and Mrs. Gaylord for the Benefit of Their Daughters and Their Living Issue, Has at All Times Since Its Inception in 1935 Been Valid in Any Case as an Oral Irrevocable Trust of Personal Property Which Needed No Writing, and the Proceeds of the Stock Constituting the Corpus of Such Trust, No Matter How Subsequently Invested or in What Form Transmuted, Always Remain Subject to Such Oral Irrevocable Trust.*

Despite any provision of the 1931 amendment to Section 2280 of the California Civil Code, it has never been required that a trust of personal property, such as shares of corporate stock, be in writing, but the same may be formed by a purely oral declaration, understanding or agreement.

Booth v. Oakland Bank of Savings (1898), 122 Cal. 19, 54 Pac. 370;

Hellman v. McWilliams (1886), 70 Cal. 449, 11 Pac. 659.

It is obvious from reading *Section 2280* that it does not refer to oral trusts, no matter what or how much the trust estate includes. Such a trust can still be created, and unless in its creation there is expressly reserved power of revocation, change or modification, the trust is neither revocable nor can be changed nor modified. Such was the case in the years 1935 to 1939 and thereafter.

Where, as here, the trustors and trustees had an oral intent, purpose, understanding and agreement for creating an irrevocable trust covering the 7000 Marathon Paper Mills shares the circumstances that later they executed a declaration of trust setting forth more explicitly certain terms and conditions upon which and uses and purposes for which such stock and its proceeds were to be held by the trustees does not prevent them from showing that such trust, dating back to the original oral understanding and agreement, was intended always to be irrevocable. Because the written declaration is entirely silent upon this subject and contains no statement either way, the provision for irrevocability still subsists. It is, therefore, a proper situation for introduction of parol evidence to explain rather than contradict the written instrument, and in such case oral statements of the trustors and trustees made before and after such execution of the written declaration of trust may be considered as well as conduct of the parties affected by the instrument in performance under it.

65 *C. L.*, pp. 500 to 502 (Trusts, Sections 248 and 250).

The Tax Court refers briefly in its Findings and Opinions to this alternative contention of the petitioners and says:

“The obvious answer to that contention is that the record fails to show that there was ever any intention to create an oral trust, irrevocable or otherwise, or that any oral trust was, in fact, created. The only trust created was the written trust described in our finding of fact, and is that trust, and not some other trust, with which we are here concerned.” [Findings, Tr. pp. 204 to 205.]

To this it should suffice to reply that Mr. and Mrs. Gaylord intended and validly agreed between them to create *an* irrevocable trust—whether orally or in writing is, in a sense, immaterial—and the declaration dated November 7, 1935, merely implemented, so far as it went, such precedent agreement and did not alter or abrogate the important, to their minds, provision that such trust was irrevocable, and that the declaration’s silence on that point is filled by such original and continuing express oral understanding. It might have been different if the written declaration had stipulated otherwise.

Nor should it need argument to show that where an oral irrevocable personal trust of personal property has been established real property thereafter acquired for the trust through sale of the personal property and investment of its proceeds in such real property becomes subject to the same condition of irrevocability.

II.

The Tax Court Erred in Concluding That Estoppel Is Not an Issue in This Case and in Deciding That Respondent Commissioner Is Not Estopped to Claim That the Trust Was Irrevocable.

The petitioners contended before The Tax Court that because of the making and filing in 1936 by the trustors Mr. and Mrs. Gaylord of their gift tax returns expressly referring to the trust as an irrevocable trust and the payment in that year by Mr. Gaylord of gift tax on transfers to the trust of stock which constituted the original trust estate, shown in his gift tax return, and the continued retention by the Treasury Department of the amount of taxes so paid and its failure to question until 1941 the irrevocable character of the trust and the reliance at all times by the trustors, trustees and beneficiaries of the trust upon the fact that the trust was irrevocable and upon the apparent agreement of the Treasury Department therein, respondent Commissioner is estopped from claiming or asserting that the trust ever was or is irrevocable.

If the trust provided for in the declaration of trust dated November 7, 1935, at any time was revocable or could be terminated by Mr. and Mrs. Gaylord, or either of them, neither of them was required to make any gift tax return with respect to the stock contributed to and forming the initial *corpus* of the trust estate and no gift tax was payable on any such contribution.

Revenue Act of 1932, Section 501;

Regulations 79, Article 3;

Burnet v. Guggenheim (1932), 288 U. S. 280;

Estate of Sanford v. Com. (1939), 308 U. S. 89;

Rasquin v. Humphreys (1939), 308 U. S. 54;

Com. v. Warner (C. C. A. 9, 1942), 127 Fed. (2d)

However, they, believing that they had made an irrevocable trust and so declaring under oath in their respective gift tax returns that they had done so, filed such returns with the Collector of Internal Revenue in 1936 and Mr. Gaylord then paid to him the gift tax shown on his return. Mrs. Gaylord made no such payment of gift tax because of the exemption and exclusions to which she was entitled on her return. Later in the same year 1936 there was an assessment of additional gift tax against Mr. Gaylord on his return which he then paid. Because of the plain statements made in these returns and the circumstance, among other things, that there was furnished with each such return a copy of the declaration of trust referred to therein, the Treasury Department, Internal Revenue Service, had full knowledge as early as the forepart of March, 1936, that Mr. and Mrs. Gaylord claimed and believed that under the terms of the declaration of trust they had created an irrevocable trust and that they had confirmed and ratified such irrevocable character by making such returns and statements. It was not until over five years later that the Treasury Department intimated to them or that they were first advised by it that it considered the trust to be revocable. In the meantime, for the years 1936 through 1941, they and their daughters had been permitted by the Department and Internal Revenue Service to make and file income tax returns on the basis that the trust created in 1935 was irrevocable and the income therefrom was income not of Mr. and Mrs. Gaylord nor of either of them but of their two daughters. When the Department, which through all these years had retained the gift taxes paid by Mr. Gaylord with respect to his contribution to the trust in 1935, first notified either Mr. or Mrs. Gaylord of its change of attitude or position with respect to this trust Mr.

Gaylord was already precluded by running of the statute of limitations from seeking any refund of gift taxes so paid by him in 1936. Mr. and Mrs. Gaylord were permitted by the Department to conduct their affairs and those of the trust in accordance with their understanding and belief that such trust was irrevocable and were thereby lulled into a sense of security on that subject. It is their contention that the Commissioner of Internal Revenue should not now be permitted to change his position to their detriment. The Department having assessed against Mr. Gaylord and collected from him gift taxes on the basis that the trust created was irrevocable and one in which he had definitely and permanently parted with all beneficial interest in the *corpus* and income of the trust estate should not now be permitted to adopt another diametrically different and opposite position, to Mr. Gaylord's financial loss, especially in view of the continued manifest good faith of Mr. and Mrs. Gaylord and their complete reliance at all times on the irrevocable character of the trust they had created. Every consideration of justice, equity and fair dealing estops and forbids the Commissioner now to shift or change his basis for the purpose of collecting additional taxes.

To this contention the only response made by the Tax Court was that "Estoppel must be specifically pleaded; otherwise it is not an issue in the case. *Eldorado Oil Works*, 46 B. T. A. 994." It has not been pleaded here. [Findings, Tr. p. 205.]

It is submitted, however, that the estoppel contended for by the petitioners was not only sufficiently pleaded in their respective petitions to the Board of Tax Appeals but also that such issue was definitely before the Tax Court at the hearing had in these proceedings and that the

case was tried on the theory that among the issues there was this specific issue of estoppel involved.

But before looking at the record in the present proceedings it may be well to examine the Tax Court's sole citation in the above quotation from its opinion. In the *El Dorado Oil Works* case, so referred to, no facts or circumstances were either pleaded in the petition or in evidence before the Board on which any estoppel could be founded. Says the Board in its opinion there (on page 998):

"The petitioner made representations of fact in its income tax return which were false, were known by the petitioner to be false, and were relied upon by respondent in allowing deductions which would not otherwise have been allowed."

The Board then continues (on page 999) that since

"the estoppel was not pleaded and is not even demonstrated, we are unable to consider that there is any issue of estoppel in the case or if there is such an issue that it may be decided to the respondent's [taxpayer's?] advantage."

The Board emphasized that even in its brief the taxpayer did not point out precisely what it is that the Commissioner was estopped to deny and declared that an estoppel must be definite and certain and not vague and uncertain (46 B. T. A., at pages 998 to 999). So it appears that the *El Dorado Oil Works* case is not much, if any, authority for the broad proposition above quoted from the Tax Court's opinion herein and that in the *El Dorado Oil Works* case not only were no facts from which an estoppel could arise pleaded but no such facts were proven or offered in evidence. Moreover, the taxpayer there made in its income tax return representations of fact which

were not only false but known to the taxpayer to be false. In the case now at bar there was, of course, no misrepresentation whatever in the gift tax returns made, signed, verified and filed by the petitioners early in 1936. In those returns they declared the fact to be that the trust was irrevocable, a fact which was not only believed by them then and there to be true, but which, if by reason of some legal technicality it had not theretofore been true, was made true by the very fact of their so expressing it in writing in those gift tax returns. This significant feature the Tax Court wholly overlooked in its decision.

It is not necessary that for pleading an estoppel in a proceeding such as this the particular word "estoppel" be used in the petition to the Board of Tax Appeals. All that is required on the part of the petitioning taxpayers, and it is sufficient, is to plead the facts from which the estoppel arises or on which it is based. Mr. Gaylord pleaded those facts in his petition to the Board [see Mr. Gaylord's said petition, Tr. pp. 27 to 29, 31 to 32, 34 to 35, 37 to 38] and Mrs. Gaylord pleaded the same facts in her petition to the Board. [See Mrs. Gaylord's said petition, Tr. pp. 117 to 119, 121 to 122, 125, 128.] In each such petition there appears as a part of the statement of the facts as to the creation of the trust, the making, signing, verification and filing of the gift tax returns, and allegations to the effect that the trustees, trustees and beneficiaries of the trust relied at all times upon its irrevocable character, and allegations that each of the daughter beneficiaries of the trust rendered their individual income tax returns of the income for the years 1936, 1937, 1938 and 1939, in which returns each of them included her one-half of the net income of the trust for the appropriate year, and paid her individual income taxes on such in-

come. In Mr. Gaylord's petition there was also included allegations as to his payment of the gift tax.

Though the words "estopped" or "estoppel" do not appear, the same if used would amount only to expression of a conclusion of law and not a statement of fact as required by the rules of the Board, now the Tax Court. Not only were facts constituting a legal and equitable estoppel so pleaded in both petitions, but the same were also proven at the hearing and in exhibits then admitted in evidence before that Court.

Indeed, it considered that the issue of estoppel was before it. Estoppel was another reason for introduction in evidence of the gift tax returns. When a photographic copy of Mr. Gaylord's gift tax return was received in evidence there was no objection on respondent's part to its authenticity but his counsel then stated:

"if the idea is that a gift tax or payment of a gift tax is material to this case, I object on that ground as to immateriality and irrelevancy. I take it, though, Your Honor, that counsel is offering these exhibits because of the statements made therein by Mr. Gaylord in reference to the trust." [Tr. p. 360.]

As to which the court commented:

"I don't think, in the light of counsel's opening statement on estoppel and equity you can assume that is the only purpose of the gift tax return."

After further colloquy between the court and counsel for respondent the latter stated:

"I think under counsel's theory of the case he is entitled to have the documents in evidence. No objection." [Tr. p. 361.]

Not only are the income tax returns of the daughter beneficiaries for the four years from 1936 to 1939 in evidence but also for those years Mr. and Mrs. Gaylord's individual and fiduciary returns; there being reference made in the first of the latter (that for 1936) to the filing in the early part of 1936 with the gift tax returns of Mr. and Mrs. Gaylord of a copy of the declaration of trust dated November 7, 1935.

The Commissioner of Internal Revenue had at all times the facts and circumstances of the case before him and must be presumed to know that under the law, even though the declaration of trust originally contained no expression of irrevocability, such omission was properly and adequately supplied in the gift tax returns filed referring to this particular trust and to none other, and he has had at all times full knowledge that the parties to the trust, trustors, trustees and beneficiaries, were acting and conducting themselves in reliance upon the trust's irrevocability and were paying out money and value on that basis and changing their position accordingly, and that no gift tax need have been paid by Mr. Gaylord in 1936 or at any time if the trust had not been irrevocable. But the Commissioner kept silent, received the benefits of his silence and raised no question as to the irrevocability of the trust until years had passed and he then initiated the present controversy. In justice and equity, in view of all of circumstances and facts surrounding the conduct of all parties to this trust, the respondent Commissioner should be estopped to claim or assert that the trust ever was revocable.

III.

The Tax Court Erred in Determining That All Income of the Trust Which Was Distributed by the Trustees to and Received by the Beneficiaries of the Trust in the Years 1936 Through 1939 Was Income of Mr. and Mrs. Gaylord and Not of Such Beneficiaries.

Examination of the findings and conclusions of the Tax Court [Tr. pp. 192 to 216] shows that the reason for its holding that all the trust's net income for the years 1936 through 1939 was income of Mr. and Mrs. Gaylord in respective proportions of five-sevenths to Mr. Gaylord and two-sevenths to Mrs. Gaylord was its conclusion that the trust was revocable at all times during those four years. That such conclusion is without foundation in law or fact has, it is respectfully submitted, been demonstrated in preceding pages of this brief. It follows, therefore, that the Court erred in so determining that such income was income of Mr. and Mrs. Gaylord and in failing to find and decide as a matter of fact and of law that all such income was income of the daughter beneficiaries who reported it in their respective individual income tax returns and paid taxes assessed thereon.

IV.

The Tax Court Erred in Deciding, Contrary to Law and Fact, That Rents for the Years 1938 and 1939 of the Texas Real Property Belonging to the Trust Was Income of a Revocable Trust and Hence Income of Mr. and Mrs. Gaylord and Not of the Beneficiaries of the Trust.

While the Tax Court made no specific finding as to whether these particular rents were the income of Mr. and Mrs. Gaylord or of their daughters, it did, as shown

in previous pages of this brief, utterly disregard the petitioners' argument concerning these rents and, by not differentiating between them and other income of the trust, included such rents in the income of the trust which it held taxable to Mr. and Mrs. Gaylord. That this decision of the court is erroneous likewise follows upon proof already made that the trust from its very inception was and always remained irrevocable. But respecting these rents such error of the court was multiplied because by no stretch of argument could *Section 2280 of the California Civil Code* as amended in 1931 apply to land located in the State of Texas. It is primer law that not only is validity of a trust of an interest in land determined by the law of the state where the land is (*Restatement of Conflict of Laws* as adopted and promulgated by the American Law Institute (1934 *Section 241*)) but administration of a trust of land is also governed by the law of that state (said *Restatement*, *Section 243*), which law likewise determines whether a person has an equitable interest in the land. (Said *Restatement*, *Section 239*.) It has already been shown in this brief that under Texas laws the trust declaration dated November 7, 1935, as written, and without more, sufficed to establish an irrevocable trust in that state.

V.

The Tax Court Erred in Deciding, Contrary to Law and Fact, That the Basis for Computing Gain on the Sales of Marathon Paper Mills Company Common Stock (With Exception of 100 Shares) Was \$2.84276 Per Share Instead of a Minimum of \$8.21 Per Share as Claimed by Petitioners.

There is no controversy as to 100 shares of Marathon Paper Mills Company common stock belonging to Mr.

Gaylord and included in the 2362 shares of such stock sold by him in 1939, which 100 shares was acquired by purchase by him in 1933 for \$1,700. [See Findings, Tr. p. 211.] Other than such 100 shares, the total number of shares of Marathon Paper Mills sold by Mr. and Mrs. Gaylord and the trust in the years 1936 through 1939, was 23,412 [Findings, Tr. p. 210], which included 1408 shares resulting from the 4 for 1 split of the 352 shares acquired by Mr. Gaylord in 1927 from his brother C. W. Gaylord in exchange for 432 shares of Robert Gaylord, Inc., a transaction discussed later in this brief. A memorandum showing how the \$8.21 value was determined by petitioners for all of the stock sales involved in these proceedings is set forth in Exhibit F to their respective petitions to the Board of Tax Appeals [Tr. pp. 92, 182] which Mr. Gaylord testified [Tr. pp. 366, 374-375] is corrected by Exhibits G and H to said petitions. Said Exhibit G, entitled *memorandum showing how value of stock of Marathon Paper Mills Company, owned by George S. Gaylord, is established* is set forth in the Transcript of the Record on pages 92 to 95, repeated at pages 182 to 185. Demonstration of the basis of such stock is further detailed in said Exhibit H to said petitions, entitled *Computation of Basis of Marathon Paper Mills Company Stock*, which is printed on pages 95 to 96 and again on pages 185 to 187 of the Transcript of the Record, purportedly, though erroneously, as a continuation of Exhibit G, the designation Exhibit H, used in said petitions, having been omitted in printing the transcript. Mr. Gaylord testified concerning these three exhibits and the computations shown thereon and to the correctness thereof and truth of the statements made therein. [Tr. pp. 366, 374 to 375, 379.] Said Exhibit H shows a higher cost basis per share, \$10,988,

than the \$8.21 per share claimed herein. [Tr. pp. 96, 186.]

It should be remembered that this evidence is unimpeached. Respondent offered nothing to counter it. The only witness placed on the stand by respondent on issues of the case involved in these present proceedings, Joseph A. Field, the Internal Revenue Agent who examined and reported on the stock transactions covered by the income tax returns in question, testified only as to the method or manner whereby the Government's figures were arrived at, and his testimony was received for that purpose only. [Field's testimony, Tr. pp. 545 to 548.] Because of his manifest lack of any personal knowledge of the facts pertaining to the 1917 consolidation and the actual values involved therein this witness made no attempt to testify on these subjects. The memorandum of computations on which the Internal Revenue Bureau reached its figure of \$2.8367 per share as the cost basis of the Marathon Paper Mills stock so sold was received in evidence as respondent's Exhibit U for the sole purpose of showing the method of computation and not as evidence of the truth of any purported statement of fact contained therein. [Tr. p. 557-559.]

Petitioners' contention that, except as to the above mentioned purchase by Mr. Gaylord of 100 shares in 1939, the statutory basis for computing gain on all sales of Marathon Paper Mills stock made by them individually or as trustees in the years 1936 through 1939 is a minimum of \$8.21 per share, is supported by *Section 2a of the Revenue Act of 1916* governing the Menasha Printing and Carton Company stock received by Mr. Gaylord as a result of consolidation of Menasha Carton Company and the Menasha Printing Company into the Menasha Printing and Carton

Company as of July 1, 1917, *Section 202(a) of the Revenue Act of 1926* governing the shares of Menasha Printing and Carton Company stock received by his brother C. W. Gaylord in 1927 in exchange for 432 shares of Robert Gaylord, Inc., and *Section 113(a) of the Revenue Acts of 1936 and 1938* governing the ultimate sales of such Marathon Paper Mills Company stock in the years 1936 through 1939.

The receipt by Mr. Gaylord of his common and preferred shares of Menasha Printing and Carton Company on its coming into being as a result of the consolidation of Menasha Printing Company and Menasha Carton Company in 1917, was, as to Mr. Gaylord, a taxable exchange in that year, although through inadvertence and mistake it was not so regarded by him. Though *Marr v. U. S.* (1925), 268 U. S. 536, had not yet been decided when Mr. Gaylord entered into the 1917 consolidation, the 1916 revenue act granted no exemption from income taxation to transactions connected with the reorganization, merger and consolidation of corporations.

Cullinan v. Walker (1923), 262 U. S. 134;

Holmes Federal Taxes (6th Ed.) pp. 655 to 656.

The Tax Court, itself, in the proceedings now on review states that "The revenue act in force at the time of the 1917 consolidation contained no provision for the non-recognition of gain in the case of corporate reorganizations or the carry-over of the basis of the old stock to the new, and the parties so agree." [Findings, Tr. p. 214.]

Under Section 2a of the Revenue Act of 1916 the cost to Mr. Gaylord of the common and preferred shares of Menasha Printing and Carton Company then received was (a) the fair market price or value (real and actual value)

of his 337 shares of Menasha Carton Company which he turned into the consolidation, plus (b) the \$152,161.11 principal amount of his promissory note dated August 30, 1917, in favor of Clinedinst; said 337 shares and promissory note being given in exchange by Mr. Gaylord in and as a part of a single undivided transaction as a common consideration, undistinguished and unallocated as to any particular shares, for the 1975 shares of common and 410 shares of preferred stock of Menasha Printing and Carton Company so received by him on such consolidation. [Mr. Gaylord's testimony, Tr. pp. 367-368, 369-390, 371-372.] But Mr. Field, the Internal Revenue Agent, testifying as to the method or manner whereby respondent's figure of \$2.83+ was arrived at, admitted with respect to Mr. Gaylord's 337 shares of Menasha Carton Company contributed by him to the consolidation, that he (the witness) "made no reference to the fair market value of the stock upon advice from Washington that the same did not have a valuation above cost," which was \$34,436.51. [Field's testimony, Tr. p. 551.] He further testified that this cost "was allocated to the preferred and the common [of the Menasha Printing and Carton Company received by Mr. Gaylord in the consolidation for his said 337 shares of Menasha Carton Company] on the relative par value of the two stock, so that for the 190 shares of preferred there was allocated \$10,468.70, and to the 435 shares of common there was allocated \$23,967.80." [Field's testimony, Tr. p. 549.] Mr. Field also testified that he considered the \$152,161.11 promissory note to be the purchase price of 1525 of these common shares, giving as his only reason that "From the information on the note it might be supposed that that note was to pay for 1525 shares of stock purchased from Mr. Clinedinst, and, as

such was used in my report" [Field's testimony, Tr. pp. 552-553] despite the fact that the par value of the 1525 shares was \$152,500 and, as positively testified to by Mr. Gaylord—the only evidence on the subject—, there was no separate purchase of the 1525 shares as they were all lumped together, as it were, with all the other stock received by him in the consolidation as integral and inseparable parts of the same reorganization transaction. Field added that "the basic cost of \$2.8367 culminates from the purchase that I have recorded here of 1525 shares for \$152,161.11." [Field's testimony, Tr. p. 553.] He repeatedly stated that he regarded Mr. Gaylord's acquisition of 190 shares of preferred and 435 shares of common stock of Menasha Printing and Carton Company as an exchange for Mr. Gaylord's 337 shares of Menasha Carton Company and as a transaction separate and apart from his "purchase" for \$152,161.11 of 1525 shares of common stock of the new company and not a part of the one transaction of the reorganization of the Menasha Carton Company and the Menasha Printing Company: "I considered them two separate transactions." [Field's testimony, Tr. pp. 556-557, 561.] On cross-examination he conceded that if the 1917 consolidation were a taxable reorganization the basis of the stock would properly have been the then value of Menasha Carton Company stock contributed by Mr. Gaylord. [Field's testimony, Tr. p. 553.] Previously, on direct examination, witness Field thus summed up the difference between his method whereby he had obtained the \$2.83+ basis of cost for the Marathon Paper Mills stock sold and Mr. Gaylord's whereby he arrived at the \$8.21 minimum basis: "Mr. Gaylord used a valuation of \$350,000 for stock that I used a valuation on of \$34,436.50," and that Mr. Gaylord's valuation "was

used as an apparent fair market value, supposedly, as of the date of the consolidation." [Field's testimony, Tr. p. 552.]

The Tax Court very properly repudiates the Commissioner's position that the market value of Mr. Gaylord's Menasha Carton Company stock contributed by him to the exchange was not to be considered and correctly declares the law when it says:

"To the extent then, that Gaylord acquired preferred and common shares of stock of the Menasha Printing & Carton Co. for his 337 shares of Menasha Carton Co. in the 1917 consolidation, he realized gain or sustained loss equal to the difference between the fair market value of the shares so acquired, and his cost or other basis for the Carton Co. stock exchanged and the basis of the Carton Co. shares surrendered, adjusted by the gain or loss realized or sustained, became the basis to him of the Menasha Printing & Carton Co. shares acquired. In other words, the basis for the Menasha Printing & Carton Co. shares was the same as their fair market value when acquired." [Findings, Tr. p. 214.]

However, in applying the principle that the basis for the new company's shares was the same as their fair market value when acquired by Mr. Gaylord, the Tax Court arbitrarily disregards the undisputed evidence of Mr. Gaylord's positive and uncontradicted testimony that the consolidation was effected on the basis of the respective appraised values of the physical assets plus the book values of the quick assets of each of the two consolidating corporations used not as an indication or determination of real or actual, or fair market values, values involved but rather and only as a standard or measuring stick or rule

of thumb for arriving at the proportionate respective interests in the new company of the stockholders of each of the old companies, and that his exchange of his 337 shares of the Menasha Carton Company and his execution at the same time of his \$152,161.11 note for the common and preferred stock of the new corporation received by him in the consolidation were essentially part and parcel of one integral and undivided transaction not involving any separate purchase of any stock from Clinedinst, and concludes and finds that "the fair market value of the preferred and common shares of Menasha Printing & Carton Co. stock acquired by Gaylord in the consolidation was \$100 per share" and "As for the shares purchased from Clinedinst personally, that was the price actually paid." [Findings, Tr. p. 215.]

It is submitted that there is absolutely no evidence in the record of any such separate purchase from Clinedinst. As revealed by witness Field's testimony, such a supposed purchase was an unfounded and arbitrary assumption made by him (who had no knowledge of the real facts) in trying to reach as low a cost basis as possible for the Menasha Printing and Carton Company stock received by Gaylord in the consolidation.

The \$100 per share assumed and found by the Tax Court to be the "fair market value" of such stock is merely the par value thereof and has nothing to do with its true value. There is no support in the evidence for this finding or for the Tax Court's unqualified statement that "One hundred dollars per share was the price fixed by the parties for the new shares in their dealings with each other. That price was arrived at by taking the value as of the date of consolidation of the combined assets of the consolidated corporations." [Findings, Tr. p. 214.]

It is plain from Mr. Gaylord's testimony concerning figures used in computing the division between the respective stockholders of the Carton Company and the Printing Company of the stock issued by the new company that \$100 per share was not a price fixed but only the par value of the new company's stock. Par value of stock given for something is no evidence of value of that thing.

Ziegler, 1 B. T. A. 186, Dec. 78.

The foregoing remarks are applicable to the Tax Court's comment that

"Clinedinst had more at stake in the two corporations than Gaylord, and yet he was willing to deal on the basis of value of assets, which gave an indicated value for the stock of the new corporation of \$100 per share." [Findings, Tr. p. 215.]

Though Clinedinst's Menasha Printing Company may have been worth more than the Menasha Carton Company in which Mr. Gaylord was interested, it was Clinedinst who, as the Tax Court found,

"desired to consolidate the assets and businesses of the two corporations into a new corporation, with Gaylord, as its manager." [Findings, Tr. pp. 206 to 207.]

in accordance with Mr. Gaylord's testimony

"that Mr. Clinedinst was satisfied that I was the man to run the business" [Tr. p. 369]

and, consequently, it was Mr. Gaylord who dictated the terms of the consolidation. Clinedinst was quite willing to use the measuring stick of "quick assets" plus appraised value of tangible assets in arriving at the proposed dis-

tribution of the stock of the new company because he was thereby obtaining Mr. Gaylord's managerial ability and services for the printing business combined with the Carton Company.

The Tax Court acted arbitrarily in disregarding the unimpeached and uncontradicted evidence of Mr. Gaylord as to earnings of the Carton Company and the Printing Company and of the combination resulting therefrom. No attempt was made by respondent, by cross-examination or otherwise, to disparage this testimony. While Mr. Gaylord testified from memory and in what he called "round figures", he was one of the men who had been vitally interested in the transactions involved, and there is nothing extraordinary in the circumstance that he exhibited such a good memory for figures in what had then taken place.

However, it must not be overlooked that for years before the hearing before the Tax Court in these proceedings Mr. Gaylord had furnished to the Treasury Department a statement of the earnings of the Menasha Carton Company and the Menasha Printing Company and of the consolidated Menasha Printing and Carton Company for the period 1915 to 1919, which statement appears in Exhibit G to the petitioners' respective petitions to the Board of Tax Appeals [Tr. pp. 93 to 94, 183 to 184] and that Mr. Gaylord, as already pointed out, testified to the truth of the statements contained in such exhibits.

The Tax Court also appears in its Findings and Opinion on the subject of the basis for computing gain on sale of the Marathon Paper Mills stock, to follow, despite Mr. Gaylord's undisputed testimony to the contrary, respondent's theory, hereinbefore referred to, that there were two

separate transactions and not simply one undivided and integral transaction involved in Mr. Gaylord's surrender of his 337 shares of Carton Company stock and his execution of the promissory note, for which together, considered as a whole, he received the 1975 shares of common and 410 shares of preferred stock of the new company. Neither respondent nor the court had the right to make such a severance of the contract to which Mr. Gaylord was a party in providing for the consolidation of the Printing Company and the Carton Company.

First Seattle Dexter Horton National Bank et al v. Commissioner (C. C. A. 9, 1935), 77 Fed. (2d) 45.

In determining fair market value of the common stock of Menasha Printing and Carton Company, acquired by Mr. Gaylord in the 1917 consolidation, consideration must be given to the then value as going concerns of the two companies and businesses so merged, which going concern value involves earnings and the result of the capitalization thereof.

Pfleggar Hardware Specialty Co. v. Blair (C. C. A. 2, 1929), 30 Fed. 614;

White & Wells Co. v. Commissioner (C. C. A. 2, 1931), 50 Fed. (2d) 120;

Jamieson v. U. S. (D. C., D. Mass. 1935), 10 Fed. Supp. 321;

Cushing v. U. S. (D. C., D. Mass., 1937), 18 Fed. Supp. 83.

Demonstrated earning power of stock must be considered.

O'Bryan Bros. v. Commissioner (C. C. A. 6, 1942), 127 Fed. (2d) 645;

Morrill v. U. S. (D. C., D. New Hampshire 1937), 18 Fed. Supp. 697.

VI.

The Tax Court Erred in Failing to Find and Decide That Under Section 202(a) of the 1926 Revenue Act the Cost to Mr. Gaylord of the 352 Shares of Menasha Printing and Carton Company Stock Received by Him From His Brother C. W. Gaylord in 1927 in Exchange for 432 Shares of Robert Gaylord, Inc., was the Fair Market Value of Such Shares of Menasha Printing and Carton Company in August of 1927.

Though, as found by the court, the whole arrangements whereby Mr. Gaylord acquired from his brother C. W. Gaylord in 1925 432 shares of Robert Gaylord, Inc. in exchange for 350 shares of Menasha Printing and Carton Company stock, was, as between them, cancelled, as though it had never existed [Findings, Tr. pp. 209 to 210] the transaction was, nevertheless, taxable under the then applicable law regardless of the fact that the parties thereto did not at the time so consider it. The value in August, 1927, of the 352 (not 350) shares of Menasha Printing and Carton Company stock so received by Mr. Gaylord from his brother upon return to the latter of the 432 shares of Robert Gaylord, Inc. was as shown in Exhibit H to the petitioners' respective petitions to the Board of Tax Appeals [Tr. pp. 96, 186], to the correctness of which Mr. Gaylord testified without contradiction, \$2,762.51. After briefly finding the facts as to this transaction, the court completely ignored it, as indicated by its subsequent silence on the subject on its Findings and Opinion.

It is respectfully urged that the decisions of the Tax Court of the United States under review be reversed.

Respectfully submitted,

THOMAS A. J. DOCKWEILER,
Attorney for Petitioners.

No. 10,936

In the United States Circuit Court of Appeals
for the Ninth Circuit

GEORGE S. GAYLORD, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

GERTRUDE H. GAYLORD, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

ON PETITIONS FOR REVIEW OF THE DECISIONS OF THE TAX
COURT OF THE UNITED STATES

BRIEF FOR THE RESPONDENT

SAMUEL O. CLARK, Jr.,

Assistant Attorney General

SEWALL KEY,

J. LOUIS MONARCH,

HELEN GOODNER,

Special Assistants to the Attorney General

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PAUL P. O'BRIEN,

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**In the United States Circuit Court of Appeals
for the Ninth Circuit**

No. 10936

GEORGE S. GAYLORD, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

GERTRUDE H. GAYLORD, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

*ON PETITIONS FOR REVIEW OF THE DECISIONS OF THE TAX
COURT OF THE UNITED STATES*

BRIEF FOR THE RESPONDENT

OPINION BELOW

The opinion of the Tax Court (R. 192-222) is reported at 3 T. C. 281.

JURISDICTION

These cases involve federal income taxes for the years 1936, 1937, 1938, and 1939. On September 17, 1941, the Commissioner of Internal Revenue mailed to each of the taxpayers a notice of deficiencies in income taxes for these years. (R. 44-61, 134-151.) The deficiencies asserted against George S. Gaylord totaled

\$49,518.76 (R. 46) and the deficiencies asserted against Gertrude H. Gaylord totaled \$8,043.63 (R. 136). Within 90 days thereafter and on November 10, 1941, taxpayer George S. Gaylord filed a petition, and on November 26, 1941, Gertrude H. Gaylord filed a petition, with the Tax Court (then the Board of Tax Appeals) for a redetermination of the deficiencies under the provisions of Section 272 of the Internal Revenue Code. (R. 6-96, 101-187.) The decision of the Tax Court finding deficiencies in income tax against Gertrude H. Gaylord for 1936, 1937, and 1939 in a total amount of \$8,007.89 was entered July 14, 1944. (R. 273-274.) The decision of the Tax Court finding deficiencies in income tax against George S. Gaylord for 1936, 1937, 1938, and 1939 in a total amount of \$47,241.11 was entered August 4, 1944. (R. 274-275.) The cases come to this Court by petitions for review filed by each taxpayer on October 11, 1944 (R. 275-303, 307-334), pursuant to the provisions of Sections 1141 and 1142 of the Internal Revenue Code.

QUESTIONS PRESENTED

1. Whether trust income is taxable to the taxpayer-grantors: (a) under Section 166 of the Revenue Acts of 1936 and 1938 and the Internal Revenue Code because the trust was revocable by them under California law; or (b) under Section 22 (a) of the Revenue Acts of 1936 and 1938 and the Internal Revenue Code because they retained such powers over the trust corpus as to remain in substance the owner thereof and of the income; or (c), in the alternative, whether one-half of the trust income for 1936 and the first five months of

1937 is taxable to taxpayers under Section 167 of the Revenue Act of 1936 because that part of the income could under the trust instrument have been used to discharge their legal obligation to support their minor daughter.

2. Whether under the facts the Commissioner is estopped to assert deficiencies in income taxes for 1936-1939, inclusive, against taxpayers.

3. Whether the finding of the Tax Court as to the fair market value of Menasha stock upon acquisition in 1917, which value determines the basis for computing gain on the Marathon stock sold in the taxable years by taxpayers individually and as trustees for the Gaylord trust, is supported by substantial evidence.

STATUTES AND REGULATIONS INVOLVED

These are printed in the Appendix, *infra*, pp. 48-55.

STATEMENT

The Tax Court made findings of fact with respect to the issues on appeal to this Court, the material parts of which may be summarized as follows:

First Issue: Taxability of Trust Income to Grantors

The taxpayers are husband and wife and reside in Pasadena, California. They have two daughters, Margaret, born on November 10, 1905, and Gertrude, born May 31, 1916. Both daughters are married and have children of their own. (R. 195.)

Prior to September, 1935, taxpayers decided to create a trust for the benefit of their two daughters, and in the case of the death of a daughter, then for

the benefit of the children of such daughter. On December 11, 1935, the taxpayers signed and acknowledged a declaration of trust in which they were named jointly as trustee. A trust was declared with respect to 7,000 shares of the common capital stock of Marathon Paper Mills Company, 5,000 shares of which were contributed by Mr. Gaylord and 2,000 shares by Mrs. Gaylord. There was no provision relating to whether the trust was revocable or irrevocable.¹ (R. 195-196.)

When requesting counsel to prepare the trust instrument, Gaylord told him that he and Mrs. Gaylord desired to form an irrevocable trust with respect to the stock. At the time the taxpayers signed the trust instrument, they were advised by their counsel that the trust was irrevocable. (R. 196.)

On February 4, 1936, the taxpayers filed gift tax returns, prepared by Gaylord, for the year 1935, in which they reported the creation of an irrevocable trust and the transfer thereto of stock of Marathon Paper Mills Company (hereinafter referred to as Marathon). (R. 196.)

The certificates for the 7,000 shares of Marathon stock were placed in a safe deposit box in California in the name of Mr. and Mrs. Gaylord as trustees. The stock remained there until it was sold. The trustees sold some of the stock in each of the years 1936 through 1939, the last of it being sold in the latter

¹ The trust instrument is printed at R. 61-76. Its provisions will be discussed in more detail, *infra*, in connection with the Government's alternative argument that the trust income is taxable to the taxpayer-grantors under Section 22 (a) of the Revenue Acts of 1936, and 1938, and the Internal Revenue Code.

year.² The proceeds of all sales were deposited in an account in a Chicago bank in the names of taxpayers as trustees. (R. 197.)

In connection with the purchase of real estate in Los Angeles County, California, the trustees had the trust instrument recorded in the office of the county recorder of that county on September 23, 1937. In 1938 the trustees purchased \$90,000 of real estate situated in Texas and recorded the trust instrument in four counties of that state. (R. 197.)

For each of the years 1936 through 1939, the trustees filed a fiduciary income tax return for the trust, in which each daughter was shown as a trust beneficiary, entitled to one-half of the income thereof. For each of these years the daughters filed income tax returns in which they reported as taxable income received from the trust the amounts shown by the fiduciary returns as having been distributed to them during the respective years. (R. 197-198.)

On March 27, 1940, at the instance of their counsel the taxpayers signed and acknowledged an instrument reading as follows (R. 198-199):

Declaration Being a Part of a Certain Declaration
of Trust Dated November 7, 1935

Know All Men by These Presents:

That Whereas the undersigned, George S. Gaylord and Gertrude H. Gaylord, his wife, of the City of Pasadena, in the County of Los

² The proper cost basis for computing gain on the sales of this stock is involved in the second issue. The facts relating to basis are set out, *infra*.

Angeles, State of California, do in and by an instrument of even date herewith entitled Declaration of Trust certify and declare and in and by said instrument have certified and declared that they hold and shall and will hold the following described personal property, to wit: seven thousand (7,000) shares of the common capital stock of Marathon Paper Mills Company, a Wisconsin corporation, of the par value of Twenty-five Dollars (\$25.00) per share, and any and all proceeds thereof, In Trust, Nevertheless, for the uses and purposes and upon the terms and conditions set forth in said Declaration of Trust, reference to which Declaration of Trust is hereby made for further particulars thereof: Now, Therefore, said George S. Gaylord and Gertrude H. Gaylord do further certify and declare that the trust created and provided for in said Declaration of Trust was always intended and is intended by said trustors and trustees, George S. Gaylord and Gertrude H. Gaylord, to be and is and shall always be absolutely irrevocable and that this further declaration of said undersigned is and is intended to be and shall always be a part of said Declaration of Trust and is intended to be and shall always be taken with and construed as a part of said Declaration of Trust the same as though this present declaration had been physically incorporated in said Declaration of Trust.

In Witness Whereof, said George S. Gaylord and Gertrude H. Gaylord, said trustors and trustees, have set their hands and seals to this instrument as of this 7th day of November, 1935, at Pasadena, California.

This instrument was left with their counsel and recorded in Los Angeles and Calaveras Counties, California, on March 28, 1940, and May 14, 1940, respectively. (R. 199.)

The Commissioner determined that the net income of the trust for the years 1936-1939, inclusive, was taxable to the taxpayers as grantors under Sections 22 (a), 166, and 167 of the Revenue Acts of 1936, 1938, and the Internal Revenue Code; that since Gaylord had contributed to the trust five-sevenths of the stock, that fractional part of the net income of the trust was taxable to him; and that the remaining two-sevenths of the trust income in these years was taxable to Mrs. Gaylord, since she had contributed two-sevenths of the total corpus of the trust. (R. 46, 137, 199-200.) The Tax Court affirmed this determination, holding that the income was taxable to the grantors under Section 166. (R. 200-206.)

Second Issue: Basis for Computing Gain on Sale of Marathon Stock

In each of the years 1936, 1937, 1938, and 1939, taxpayers individually, and as trustees for the Gaylord trust, sold shares of stock of Marathon Paper Mills Company. (R. 210.) The shares sold by Mrs. Gaylord personally had been acquired by gift from Mr. Gaylord in 1932, and the shares sold by the trustees were those given by them to the trust upon its creation in 1935. The shares contributed to the trust by Mrs. Gaylord had been acquired by her as a gift from Mr. Gaylord in 1930. (R. 211.)

The Marathon stock had been acquired by Mr. Gaylord through the following transactions:

On July 1, 1917, Gaylord owned 337 shares of stock of Menasha Carton Company (hereinafter referred to as "Carton"), which he had acquired at various times prior thereto for a cost of \$34,436.50. One Clinedinst also owned 337 shares of Carton stock and all the stock of Menasha Printing Company (hereinafter referred to as "Printing"). (R. 206.)

Clinedinst desired to consolidate the assets and businesses of the two corporations into a new corporation, with Gaylord as its manager. It was agreed that Gaylord should purchase sufficient stock in the new corporation from Clinedinst to bring his holdings therein up to 40% of the total outstanding stock. (R. 206-207.)

The basis for consolidation was left to Gaylord. He determined that the consolidation should be effected on the basis of the appraised value of the physical assets, plus the book value of the quick assets of each of the old corporations. The method of computing the values of the stock of the two old corporations by capitalization of current earnings at ten times such earnings (regarded by Gaylord as a conservative rate) would have indicated a substantially higher value for the stock of the old corporations than was indicated by value of assets. (R. 207.)

The new corporation, Menasha Printing & Carton Company (hereinafter referred to as "Menasha") was formed in 1917 and the consolidation was effected on the basis determined by Gaylord. The value of the Carton assets was determined to be \$186,000 and

the value of the Printing assets \$774,000, making a total of \$960,000. For these assets \$500,000 in common and \$460,000 in preferred stock, both \$100 par value per share, of Menasha were issued. On this basis Gaylord was entitled to 449.68+ shares of common and 413.7+ shares of preferred Menasha stock for his 337 shares of Carton stock. Gaylord actually received, however, 410 shares of preferred, par \$41,000, and 453.3889 shares of common Menasha stock, par \$45,338.89. The fair market value of these shares was \$100 per share. (R. 207-208.)

In addition, Gaylord purchased from Clinedinst for a price of \$152,161.11 sufficient shares of common stock of Menasha to bring his holdings to 1,975 shares of common. This made his total payment for 1,975 shares the amount of \$197,500. In his income tax return for 1917, Gaylord did not report any income on the exchange of 337 shares of Carton stock for stock of Menasha. (R. 208, 209.)

Prior to 1922 all the Menasha preferred stock issued in the 1917 consolidation had been retired. In 1922 or 1923 Gaylord purchased the remaining interest of Clinedinst in Menasha. Prior to October 31, 1927, Gaylord sold some small amounts of Menasha common stock. In 1925 he received a 100% stock dividend on the stock then held. On October 31, 1927, he owned 3,357 shares. (R. 209.)

Of the stock so held on that date 350 shares had been transferred by Gaylord in 1925 to his brother for 432 shares of stock of Robert Gaylord, Inc. The brother subsequently in 1926 or 1927 desired to reacquire the 432 shares of Robert Gaylord stock for

use in connection with a reorganization. After negotiation, it was agreed that the 1925 exchange of Menasha stock for Robert Gaylord stock be cancelled, as though it had never existed. Pursuant thereto, the shares were returned to their original owners, each party paying over all dividends which had been received on the respective stocks during the interval. (R. 209-210.)

On October 31, 1927, Menasha was merged with Marathon. In this merger Gaylord received 6,728 shares of Marathon stock and \$1,038,000 par value of its 5% bonds in exchange for 3,357 shares of common stock of Menasha. In December, 1929, the Marathon stock was split four shares for one. (R. 210.)

Taxpayers reported gain on the sales of Marathon stock in the taxable years, computed on a basis of \$8.21 per share. (R. 211.) The Commissioner determined that the basis per share was \$2.83542. (R. 47.) The Tax Court did not approve the basis used by either party but found that the basis of the 3,357 shares of Menasha stock held by Gaylord in 1927 was \$50 per share and that computation of the basis of the Marathon shares sold should be computed therefrom.³ (R. 211-216.)

³ The computation pursuant to the Tax Court's decision resulted in a basis of \$2.84276 each for the Marathon shares sold in the tax years. (See computation of the Commissioner in which taxpayers acquiesced (R. 273, 274) at R. 260-261, 272-273.) In the exchange of Marathon stock and bonds for 3,357 shares of Menasha stock, 46.033% of the \$50 value for Menasha stock (pursuant to agreement between the parties) was allocated to the Marathon stock, resulting in a basis per share for Marathon stock in 1927 of \$11.37106. This figure was then divided by 4, in order to get the value per share after the 1929 split-up.

SUMMARY OF ARGUMENT

I. Under Section 166 of the Revenue Act of 1936 and subsequent Acts, the income of the trust created by taxpayers for the benefit of their two daughters is taxable to them, because they had a power to revoke the trust. The trust instrument did not provide that it was irrevocable. Consequently taxpayers could have revoked the trust under Section 2280 of the Civil Code of California, which provides that, unless expressly made irrevocable, every voluntary trust shall be revocable. The contention that the trust was not "voluntary" within the meaning of Section 2280 is without merit. The Tax Court found, upon substantial evidence, that the transfer in trust was a gift and not supported by consideration. The intention of taxpayers that the trust should be irrevocable did not make it irrevocable, since Section 2280 requires an express statement in the trust instrument. The mere fact that the trust instrument could have been reformed or amended to state that it was irrevocable does not suffice, since it was neither reformed nor amended in the taxable years. The subsequent amendment in 1940 did not cure the defect in the trust instrument in the earlier years, from which the power to revoke was derived. Statements in the taxpayers' gift tax returns for 1935 that the trust was irrevocable also fail to meet the requirement of Section 2280 that the statement as to irrevocability be contained in the trust instrument.

Since the situs of this trust was in California, the existence of the power to revoke is to be determined under the law of California. Even though some of

the trust income was derived from real property situated in Texas, it was income of a revocable California trust.

II. The trust income is also taxable to the grantors under the broad definition of income contained in Section 22 (a) of the Revenue Act of 1936 and subsequent Acts for the reason that their powers of control over the trust were so complete that they were in substance the owners of its income. They possessed, among other powers, the broadest possible powers of management and control over the corpus; the power to vote and otherwise deal with the stock comprising the corpus as an absolute owner; ~~the power to revoke or to retake the corpus by purchasing at a bargain price~~; the power to control the amount of income by selecting investments for the corpus; the power to use some of the income in the years 1936 and 1937 to discharge their legal obligation to support a minor child; and power over the distribution of the corpus. These powers, held in their capacity as trustees, made them virtual owners of the corpus.

III. One-half of the trust income for 1936 and the first five months of 1937 is taxable to the grantors under Section 167 of the Revenue Act of 1936 because there was a possibility that it might be used to discharge the grantors' legal obligation to support their minor daughter.

IV. The Commissioner is not estopped to claim that the taxpayers are subject to tax on the income of the trust. Acceptance of the gift tax returns filed by taxpayers and the income tax returns filed by their

daughters does not prevent the Commissioner from collecting the taxes due from the taxpayers, nor does the fact that claims for refund of such gift or other taxes, which may have been paid erroneously, were barred when the Commissioner made his determination in the instant case. Moreover, the Commissioner did not misrepresent any fact, as is necessary to invoke successfully the doctrine of estoppel. Nor was estoppel specially pleaded by the taxpayers, so as to become an issue in the case.

V. The basis for the Marathon shares of stock sold by the taxpayers as individuals and as trustees for the Gaylord trust in the taxable years depends upon the basis of the Menasha shares acquired by Gaylord in 1917 upon consolidation of Carton and Printing into Menasha. Taxpayers do not question the correctness of the Tax Court's holding that the basis of the Menasha shares was their fair market value at the time of acquisition. They contend only that, in finding that the fair market value for the Menasha shares was \$100 per share, the Tax Court disregarded the evidence as to earnings of the corporation. The record does not sustain this contention. The Tax Court's opinion shows that it considered all the evidence in reaching its conclusion as to value. Its finding has substantial support in the facts that the value of the assets acquired by Menasha resulted in a value of \$100 per share for its stock and that Gaylord purchased shares from Clinedinst at that price at the time of the consolidation in 1917. Since the figures of earnings of Carton, Printing, and Menasha in 1917, testified to by

Gaylord, were not substantiated, since there was no evidence that these earnings were normal so as to justify a valuation by the capitalization of earnings method, based thereon, and since it was not demonstrated that a capitalization of earnings at a 10% rate, as contended by taxpayers, would result in a fair market value for the stock, the Tax Court was warranted in rejecting such evidence of earning capacity as a basis for a finding of the value of the Menasha stock in 1917.

ARGUMENT

I

The trust income is taxable to the grantors under section 166

The Tax Court held that the income of the Gaylord trust was taxable in the years 1936-1939, inclusive, to the taxpayers as grantors under Section 166 of the Revenue Acts of 1936 and 1938 and the Internal Revenue Code (Appendix, *infra*), on the ground that they had the power to revoke the trust under California law in those years. (R. 200-206.) The Government contends that this holding is correct, ~~and also, alternatively, that the income of the trust is taxable to the grantors under Section 166 because by using the powers given them by the trust instrument they could have revested title to the trust corpus in themselves.~~

Section 166 provides in part that—

Where at any time the power to revest in the grantor title to any part of the corpus of the trust is vested—

(1) in the grantor, either alone or * * *
then the income of such part of the trust shall

be included in computing the net income of the grantor.

This provision originated in the Revenue Act of 1924,* and certain principles pertinent to this case have been decided with respect to the section.

A grantor has a power to revest title in himself, within the meaning of this section, when he has a power to revoke the trust. *Helvering v. Wood*, 309 U. S. 344; *Helvering v. Dunning*, 118 F. 2d 341 (C. C. A. 4th), certiorari denied, 314 U. S. 631; *Kraft v. Commissioner*, 111 F. 2d 370 (C. C. A. 3d), certiorari denied, 311 U. S. 671. The mere existence of the power to revoke is sufficient to tax the income to the

* Section 219 (g) of the Revenue Act of 1924 had a similar provision couched in slightly different language:

"Where the grantor of a trust has, at any time during the taxable year, either alone or in conjunction with any person not a beneficiary of the trust, the power to revest in himself title to any part of the corpus of the trust, then the income of such part of the trust for such taxable year shall be included in computing the net income of the grantor.

The provision was designed to prevent a common method of evading income tax. H. Rep. 172, 68th Cong., 1st Sess., pp. 6-7, 21 (1939-1 Cum. Bull. (Part 2) 241, 246, 256); S. Rep. No. 398, 68th Cong., 1st Sess., pp. 7, 25 (1939-1 Cum. Bull. (Part 2) 266, 271, 283). Section 166 of the Revenue Act of 1932 amended the provision to provide that the power to revest title must be "vested in the grantor alone or in conjunction with some person not having a substantial adverse interest. Section 166 of the Revenue Act of 1934 and subsequent acts omitted the condition that the power to revest shall exist "during the taxable year." This was to close the loophole through which in *Langley v. Commissioner*, 61 F. 2d 796 (C. C. A. 2d) and other cases income was not taxed to the grantor where the provision in the trust instrument was that the grantor had power to revoke only by giving notice of a year and a day. See H. Conference Rep. No. 1385, 73d Cong., 2d Sess., p. 24 (1939-1 Cum. Bull. (Part 2) 627, 634).

grantor. It is not necessary that the grantor exercise or contemplate exercising the power. Thus, in *Corliss v. Bowers*, 281 U. S. 376, the Supreme Court said (p. 378) :

* * *, if a man disposes of a fund in such a way that another is allowed to enjoy the income which it is in the power of the first to appropriate it does not matter whether the permission is given by assent or by failure to express dissent. The income that is subject to a man's unfettered command and that he is free to enjoy at his own option may be taxed to him as his income, whether he sees fit to enjoy it or not.

The words of the statute are broad and include any power to revest title in the grantor, without the necessity of inquiring into the source from which that power is derived. It is not limited to cases where the power is derived from the express terms of the trust instrument. *Pulitzer v. Commissioner*, 36 B. T. A. 964. Indeed, the existence of a power in the grantor to revoke or revest title in himself is to be determined by the state law. *Helvering v. Stuart*, 317 U. S. 154. It follows that when the state law confers upon a grantor a power to revoke a trust, Section 166 requires that the income be taxed to him.⁵

⁵ Cf. *Howard v. United States*, 125 F. 2d 986 (C. C. A. 5th), in which it was held that the corpus of a previous gift was includible in the gross estate under Section 302 (d) of the Revenue Act of 1926, as amended, because the enjoyment by the donee was subject at the date of death to a change through the exercise of a power vested in the decedent to alter, amend, or revoke the gift. The source of this power in the decedent was a provision of the Civil Code of Louisiana that gifts between married persons during mar-

Section 2280 of the Civil Code of California (1937), as amended in 1931 (Appendix, *infra*), provides in part that:

Unless expressly made irrevocable by the instrument creating the trust, every voluntary trust shall be revocable by the trustor by writing filed with the trustee.

The trust instrument in this case contained no statement that it was irrevocable. Accordingly, the Tax Court correctly held (R. 200-206), that the taxpayers had during the years 1936 to 1939, inclusive, a power to revoke vested in them by Section 2280 of the Civil Code and that they were required to include the trust income in their gross income for those years under the express Congressional mandate of Section 166. Taxpayers urge reversal of the Tax Court's holding for seven reasons.

(a) Taxpayers first contend (Br. 26-36) that Section 2280 did not confer upon them a power to revoke the trust, because the trust is not a "voluntary" trust within the meaning of that section, citing as authority *Touli v. Santa Cruz County Title Co.*, 20 Cal. App. 2d 495. That case involved an effort by the makers

riage shall always be revocable. The court pointed out that the statute, like the one involved in this case, creates no distinction as to the source of the power to revoke, but applies to any power which is vested in a decedent. See also *Commissioner v. Allen*, 108 F. 2d 961 (C. C. A. 3d), certiorari denied, 309 U. S. 680.

Although not expressly decided, it is implicit in the decision of this Court in *Hughes v. Commissioner*, 104 F. 2d 144, that a power to revoke existing in the donor of a trust by virtue of Section 2280 of the Civil Code of California would prevent a gift from being a completed gift, subject to gift tax.

to revoke a deed of trust given to secure a note. The court construed Section 2280 of the Civil Code as not applying to trust deeds, which are akin to mortgages, given to secure debts. It said (p. 497) that the word "voluntary" in Section 2280 was used in the "restricted sense of a trust created freely and without a valuable consideration or legal obligation," and not as defined in Section 2216 of the Civil Code (Appendix, *infra*). But cf. *Fernald v. Lawsten*, 26 Cal. App. 2d 552, which seems to construe the word "voluntary" in Section 2280 as having the same meaning as in Section 2216, namely, that a voluntary trust is an obligation arising out of a personal confidence reposed in, and voluntarily accepted by, one for the benefit of another.⁶ (See p. 559.) And cf. *Hughes v. Commissioner*, 104 F. 2d 144 (C. C. A. 9th).

Regardless of which interpretation is given the term "voluntary," the trust in this case was voluntary. It was the free act of the taxpayers, the result of no compulsion whatever. It was made as a gift to the taxpayers' daughters to provide them with financial security. There was no legal or moral obligation to provide for the older daughter who was 30 years old when the trust was created, and although the taxpayers owed the duties of support and education to the younger daughter who was 19 when the trust was created (Sections 25, 196 and 197, Civil Code of Cali-

⁶Section 2215 of the Civil Code (Appendix, *infra*) classifies trusts as either voluntary or involuntary and Section 2217 (Appendix, *infra*) defines an involuntary trust as one created by operation of law.

fornia, Appendix, *infra*), these duties did not oblige them to create a trust for her benefit.

Taxpayers argue (R. 26-27) that there was consideration for this trust in that each of them agreed to make the declaration of trust in consideration of the agreement of the other to make a contribution to trust corpus. There is, of course, no provision in the trust instrument justifying this argument; it recites no consideration and simply declares that the two taxpayers henceforth hold 7,000 shares of Marathon stock in trust.

The same argument was made to the Tax Court, but it declined to make a finding in taxpayers' favor on this point. It stated in its opinion (R. 201-202):

There is some argument to the effect that the petitioners by mutual promises became obligated, one with the other, to make gifts to their daughters and that the trust was not therefore a voluntary trust within the meaning of section 2280 as amended. That argument is in our opinion without merit. The purpose and intention of the petitioners was to make gifts to or for the benefit of their two daughters, and a gift, which is the transfer of something to another without compensation, implies and denotes an act of choice, a voluntary act. The creation of the trust was merely the method for effecting or making the intended gift, and it takes its voluntary character therefrom.

Furthermore, the Tax Court denied the taxpayers' motion for reconsideration (R. 223-249) which was based in part on the argument that the mutual agree-

ment of the Gaylords furnished consideration for the trust (R. 224-225).

Thus, the Tax Court has found that the taxpayers intended to make a gift to their daughters and declared a trust as a means of carrying out their intention. Consideration, of course, is opposed to the concept of a gift. This conclusion of the Tax Court is warranted by the record, and was undoubtedly grounded in part on the fact that taxpayers have heretofore taken the position, in their gift tax returns for 1935 (R. 360B-360D, 362B-362C), that the trust was a gift. Their present argument is inconsistent with their view of the nature of the transaction at the time it transpired.

It is true that Mr. Gaylord testified that (R. 340):

The circumstances which led to the execution of that instrument are as follows: My wife and I agreed together some time previous to September, 1935, that we would form a trust for our children, and if she were willing to give 2,000 shares of the Marthon Paper Mills common stock, of which she was the owner, I would give 5,000 shares of the same stock to form this trust for our children, and in case of their death, for their children forever, * * *.

and Mrs. Gaylord stated that (R. 543):

Mr. Gaylord and I had made up our minds to give our children some money, both of them, so we had talked it over and we had decided that if I gave 2,000 shares of the Marathon Paper Mills, he would give 5,000, and that was the way it was decided, and you were asked to draw up the trust.

But this testimony shows at most only what the taxpayers decided to do with respect to the trust for their children; it wholly fails to show that each taxpayer made his gift in consideration of the gift of the other, or that one would not have made the gift if the other had not agreed to do so. In any case, assuming *arguendo* that the testimony might be susceptible of the interpretation for which the taxpayers contend, the Tax Court did not so interpret it, but on the contrary, in line with the contemporaneous representation made by taxpayers in their gift tax returns, drew the conclusion that the trust was not supported by consideration. This finding, we submit, is conclusive because supported by substantial evidence, even if the view be taken that the taxpayers' testimony creates a conflict in the evidence as to whether there was consideration for the trust.

The circumstance that Mr. and Mrs. Gaylord might have made an agreement, if such were the fact contrary to the Tax Court's conclusion on the matter, to declare a trust in consideration of a contribution to the trust by the other, would furnish consideration at most for an agreement to declare a trust, and not for the trust itself. The trust represented a gift to the Gaylord daughters and there was clearly no consideration as between the grantors and the beneficiaries of the trust. The "valuable" consideration referred to in the *Touli* case, of course, is a consideration for the trust itself, as between the settlor and the beneficiary, such as is involved where a deed of trust is executed to secure a debt.

The taxpayers' argument (Br. 34) that Section 2280 does not apply to their trust for the reason that they, in the dual capacity of trustors and trustees, could not comply with its terms and file a revocation in writing with the trustee, has no merit; there is no reason why as trustors they could not have revoked and filed the revocation with themselves in their capacity as trustees.

Nor is there merit to the argument that Section 2280 applies only when the trustee is a corporation. (Br. 35.) Not only does the section apply in terms to "every voluntary trust" but it has been construed to permit revocation of a trust where an individual was the trustee. See *Fernald v. Lawsten*, *supra*.

(b) Taxpayers argue (Br. 36-46) that, even if their trust was a voluntary trust, their oral intention that the trust was to be irrevocable had the effect of supplying the scrivener's omission of a provision that it was irrevocable.

This suggestion, of course, is contrary to the provisions of Section 2280 of the Civil Code that unless *expressly* made irrevocable *by the instrument creating the trust*, every voluntary trust shall be revocable. Hence, the mere intent on the part of the grantors to make the trust irrevocable is not sufficient under Section 2280; that section dictates that the trust instrument itself must so provide. See *Hughes v. Commissioner*, *supra*, wherein a donor created a trust but did not provide that it should be irrevocable. Although it was held that the question of revocability was to be determined by the law of Massachusetts rather than

that of California, this Court rejected a contention of the taxpayer that the trust was irrevocable in California, despite Section 2280 of the Civil Code, because the donor intended it to be irrevocable and so expressed his intention in an affidavit.

The provisions of the Civil Code of California (Sections 1640, 3399, and 3401 (Pet. Br. 37-38)), providing for the disregard of, and reformation or revision of a "contract" if it fails through mistake to express the intentions of the parties, have no application to a declaration of trust, which is not a "contract." The California courts have recognized that Section 3399 applies to contracts founded on consideration and not to "voluntary" deeds. *Enos v. Stewart*, 138 Cal. 112; *Robertson v. Melville*, 60 Cal. App. 354.² The grounds suggested by taxpayers for distinguishing the *Enos* case are predicated on the assumption that the declaration of trust in this case is founded on a valuable consideration. It has been shown above that this assumption is not justified.

It may be that equity, apart from any provision of California law, would have reformed the declaration of trust to express the intention of the taxpayers that the trust be irrevocable, but this is beside the point. The declaration of trust was not reformed or revised during any of the tax years here involved. On the contrary, the original declaration remained in full force and effect throughout the period. Moreover, it seems pointless to discuss reformation, since the tax-

² The cases relied on by taxpayers (Br. 38-40) are not in point since they deal only with true contracts.

payers had a much simpler remedy; they at any earlier time, as they did in 1940, could have amended the instrument to make it irrevocable.

Consequently, taxpayers up to the date of the execution of the second and supplemental instrument on March 27, 1940, could have revoked the trust. If anyone had questioned their right to do so, all that was necessary to uphold the right to revoke was to point to the California law and the absence in the trust instrument of a declaration of irrevocability. This power to revoke, even though not exercised, means that the trust income is taxable to them under the plain terms of Section 166 of the appropriate Revenue Acts.

(C) Taxpayers contend (Br. 46-51) that their affirmative answers in their 1935 gift tax returns to the question whether they had transferred property during the year without consideration by the creation of an irrevocable trust for the benefit of another (R. 360B, 362B) amended or modified the declaration of trust to make it irrevocable. The obvious answer to this contention is that the gift tax returns do not purport to be, nor were they intended as an addition to, or an amendment of, the trust instrument; they were simply a report to the Government, required by law, of transfers by way of gift made by them in 1935. Section 2280 of the Civil Code is specific that a trust is revocable unless expressly made irrevocable by the instrument creating the trust. Consequently, any provision as to irrevocability, to be effective, must be found in the trust instrument itself, and not some

document which is not a part of the trust agreement. *Hughes v. Commissioner, supra*, p. 147.*

(d) The contention (Br. 51-53) that the amendment to the trust instrument made in 1940 (R. 76-80) relates back to 1935, making the trust irrevocable from that date, also is without merit. Even if it be assumed *arguendo* that for some purposes the amendment might be treated as effective from the date of the creation of the trust, the issue here is whether in each of the tax years involved—1936, 1937, 1938, and 1939—this trust was revocable; and under California law, it was revocable in those years because the instrument creating the trust did not state in those years that it was irrevocable. Nothing the grantors did after 1939 can change the fact that they had the power to revoke the trust instrument in the earlier years. Cf. *Jurs v. Commissioner* (C. C. A. 9th), decided February 12, 1945, not yet reported, which involved an unsuccessful effort to change the legal effect of a waiver in certain years by a subsequently executed writing.

The circumstances (e) that the Gaylord trust would have been irrevocable in other states (Br. 53-54) and

* The case of *Union Trust Co. of Pittsburgh v. McLaughlin*, 24 F. 2d 459 (E. D. Pa.) (cited Pet. Br. 50), does not hold that recitals in a gift tax return will be construed as amending a trust instrument. In that case a testator had endeavored to create a trust with respect to an insurance policy but this failed because no beneficiaries were named. Subsequently in his will the testator named a beneficiary of half the proceeds of the policy. It was held that this perfected the trust with respect to one-half the proceeds. That case simply involved a trust which was contained in two documents, neither of which was complete in itself. In the instant case, the declaration of trust in the taxable years is fostered complete in one document, the trust instrument.

(f) that many of the transactions of the trust have been had in other states (Br. 55-58) do not alter the conclusion that this trust was revocable in California, which is the controlling law.

In *Hughes v. Commissioner*, 104 F. 2d 144, this Court considered a trust instrument, executed by a resident of California in California, transferring securities to a trust company in Massachusetts as trustee. The instrument contained no provision that it was irrevocable. The question was whether the donor had made a taxable gift; if the trust was revocable, there was not a completed gift. The Court applied Massachusetts law to determine whether the trust was irrevocable on the ground that Massachusetts was the seat of the trust.

The Court there cited with approval 2 Beale, the *Conflict of Laws* (1935), Sections 297.1 and 297.2, wherein the rules are stated that the seat or situs of a trust determines all questions relating to its administration, including the question whether the settlor may revoke; and further that the seat of a trust is determined by the intention of the settlor. Where private persons are appointed trustees, their domicile may determine the trust situs, but other circumstances, such as the domicile of the settlor and beneficiaries, the location of the trust property, the place where the deed of trust was executed, and its language may be considered. And once determined, the seat of the trust is not altered by removal of the trust res to another jurisdiction. See also as supporting these rules Land, *Trusts in the Conflict of Laws* (1940), Sections 37-38; *Restatement of the Law, Conflict of*

Laws, Sections 297, 299; *Noble v. Rogan*, 49 F. Supp. 370 (S. D. Calif.).⁹

In the instant case the situs of the trust was plainly in California. The trust instrument was executed there, the domicile of the trustees, settlors, and beneficiaries was in this state (see R. 355, 508, 524, 527) and California was also the place where the certificates of stock, the trust res, were located until sold and where the trust was administered (R. 355). The trust instrument discloses no intention on the part of the grantors that the situs of the trust shall be in any state other than California.¹⁰

⁹ Cf. *Forbes v. Commissioner*, 82 F. 2d 201 (C. C. A. 1st), holding that the law of Massachusetts, where a trust was created and administered, and in which the trust property was located, controlled the question of whether estates in trust following life estates were vested or contingent; *Commissioner v. Kellogg*, 119 F. 2d 54 (C. C. A. 3d), applying New Jersey law to determine the same question, because the trust was created in New Jersey; and *Hutchinson v. Hutchinson*, 48 Cal. App. 2d 12, in which the court held that Illinois law governed application of the parol evidence rule to a written trust where the declaration of trust was made in Illinois by citizens of Illinois, and so far as was shown the trust obligations were to be performed there. See also Annotations, 139 A. L. R. 1129 and 89 A. L. R. 1023.

¹⁰ Taxpayers make reference (Br. 53-54) to the fact that Northern Trust Company of Chicago, a foreign corporation, was designated in the trust instrument. But it was designated as successor trustee only if both the grantors failed to exercise their powers to appoint successor trustees. (R. 73-74.) As a matter of fact, on December 1, 1941, George S. Gaylord exercised his power and named his older daughter and the husband of his younger daughter, both of whom were residents of California, as successor trustees. (R. 489-492.) On December 2, 1941, taxpayers resigned as trustees. (R. 494-497.) In any case, the mere mention of a trust company which might possibly become a trustee in the future is not sufficient to overbalance all the other elements which locate the trust in California.

It is true, of course, that after the creation of the trust, the trustee sold the stock transferred to the trust in 1935 and with some of the proceeds purchased real estate in Texas and California. However, the subsequent acquisition of land in Texas does not alter the situs for administration of the trust fixed initially, and the applicability of California law thereto. 2 Beale, Section 297.1, p. 1024; *Matter of Bradford*, 165 Misc. (N. Y.) 736; *Marsh v. Marsh's Executors*, 73 N. J. Eq. 99. See also Land, Trusts in the Conflict of Laws (1940), Sections 38, 40.2. The rents received on land in Texas (Pet. Br. 68-69), therefore, were income of a revocable California trust.

(g) The Tax Court found that there was no evidence of an oral irrevocable trust in this case (R. 204), contrary to taxpayers' argument that there was such a trust (Br. 58-60). The evidence is that taxpayers decided to create an irrevocable trust and that they subsequently executed a written declaration of trust to carry out this intent. It is an elementary principle that where there is a written instrument, all previous oral agreements merge into it and no longer subsist. In any event, the trust income with which this case is concerned is not the income of an oral trust, but on the contrary is income from the properties belonging to the trust created by the writing executed in 1935; all the income arises from the shares of stock comprising the initial corpus, or from the property into which the initial corpus was converted.

Taxpayers' suggestion (Br. 59) that parol evidence is admissible to explain their intention is not valid.

While parol evidence perhaps might be admissible if there were some ambiguity in the trust instrument, there is no ambiguity here requiring explanation. Cf *Hutchinson v. Hutchinson*, 48 Cal. App. 2d 12, 20. This case is concerned only with the entire omission in the trust instrument of the express statement as to irrevocability, required by state law.

Accordingly, it is submitted that all of the trust income is taxable to the grantors under Section 166 in the proportions determined by the Commissioner and approved by the Tax Court.¹¹

II

Alternatively, the income is taxable to the grantors under section 22 (e)

Under the broad definition of income contained in Section 22 (a) of the Revenue Acts of 1936, 1938, and the Internal Revenue Code (Appendix, *infra*), income of a trust may be attributable as income of the grantor thereof where he retains such control over the trust property that he remains in substance the owner thereof. *Helvering v. Clifford*, 309 U. S. 331; *Helvering v. Stuart*, 317 U. S. 154. This is but an application of the principle that the owner of property may not assign or dispose of his right to receive the income therefrom in a way to avoid income tax thereon. *Helvering v. Horst*, 311 U. S. 112; *Helvering v.*

¹¹ It is not questioned by taxpayers that *Gaylord* is taxable on five-sevenths of the income and Mrs. Gaylord on two-sevenths thereof. This division is manifestly correct for that was the proportion in which they contributed corpus. Cf. *Colonial Trust Co. v. Commissioner*, 111 F. 2d 740 (C. C. A. 2d).

Eubank, 311 U. S. 122; *Harrison v. Schaffner*, 312 U. S. 579.

Although the Commissioner relied upon Section 22 (a) as well as Section 166, and Section 167 in the case of Mr. Gaylord, in the deficiency letters (R. 46, 137), the Tax Court, in view of its decision that Section 166 applies, made no finding as to whether Section 22 (a) also applied.¹² The Government contends, however, that the decisions of the Tax Court may be supported on the ground that the grantors in this case retained such powers of control over the trust property that they were in substance the owners thereof. This question appears to be primarily one for the trier of the facts, and if the Court should disagree with the Government's position that the trust income is taxable to the grantors under Section 166, it is suggested that under the practice followed by the Supreme Court in *Helvering v. Stuart*, 317 U. S. 154, the case should be remanded to the Tax Court for a finding on this point.

In the *Clifford* case the grantor was held taxable under Section 22 (a) upon trust income paid to his wife as beneficiary, where the trust was to continue for a short term of five years or until prior death of the taxpayer or his wife; and upon termination of the

¹² The applicability of Section 22 (a) is a question which the Government may argue before this Court, particularly when the Commissioner relied on the section in the deficiency letters. See *Helvering v. Stuart*, 317 U. S. 154; *Hormel v. Helvering*, 312 U. S. 552. Furthermore, a respondent on review may urge any matter appearing in the record in support of the judgment below. *Helvering v. Gowran*, 302 U. S. 238; *LeTulle v. Scofield*, 308 U. S. 415, rehearing denied, 309 U. S. 694; *Ryerson v. United States*, 312 U. S. 405.

trust the corpus was to go to the grantor or his estate but any undistributed income was the property of the wife. The grantor was the sole trustee with broad powers of control over the trust property. The reason for the decision was that since the grantor retained so many controls over the investment and kept the income within the family group, there was no substantial change in his economic position. "For as a result of the terms of the trust and the intimacy of the familial relationship respondent retained the substance of full enjoyment of all the rights which previously he had in the property." (p. 335.) The Court said further (p. 334):

Technical considerations, niceties of the law of trusts or conveyances, or the legal paraphernalia which inventive genius may construct as a refuge from surtaxes should not obscure the basic issue. That issue is whether the grantor after the trust has been established may still be treated, under this statutory scheme, as the owner of the corpus. See *Blair v. Commissioner*, 300 U. S. 5, 12. In absence of more precise standards or guides supplied by statute or appropriate regulations, the answer to that question must depend on an analysis of the terms of the trust and all the circumstances attendant on its creation and operation. And where the grantor is the trustee and the beneficiaries are members of his family group, special scrutiny of the arrangement is necessary lest what is in reality but one economic unit be multiplied into two or more by devices which, though valid under state law, are not conclusive so far as § 22 (a) is concerned.

The principle of the *Clifford* case has not been restricted to its precise facts. In *Helvering v. Stuart*, 317 U. S. 154, the trust was a long term trust, and neither principal nor income was to return to the grantor. Nevertheless the grantor's control over the trust corpus was great and the Court said (p. 168):

* * * economic gain for the taxable year, as distinguished from the non-material satisfactions, may be obtained through a control of a trust so complete that it must be said the taxpayer is the owner of its income.

Although this Court has apparently not had occasion to pass on the scope of Section 22 (a) in connection with trust income, the cases applying the rule of *Helvering v. Clifford* in other fact situations are legion. See, e. g., *Stockstrom v. Commissioner* (C. C. A. 8th), decided March 24, 1945 (1945 P-H, par. 72,465); *Miller v. Commissioner* (C. C. A. 6th), decided February 13, 1945 (1945 P-H, par. 72,376); *Commissioner v. Buck*, 120 F. 2d 775 (C. C. A. 2d); *White v. Higgins*, 116 F. 2d 312 (C. C. A. 1st); *Losh v. Commissioner*, 145 F. 2d 456 (C. C. A. 10th); *Williamson v. Commissioner*, 132 F. 2d 489 (C. C. A. 7th); *Whitely v. Commissioner*, 120 F. 2d 782 (C. C. A. 3d), certiorari denied, 314 U. S. 657.

In the instant case the following facts, most of which have been singled out as significant in other cases in determining whether the grantor retained substantial ownership, lead to the conclusion that the grantors remained owners of the trust corpus in the taxable years.

The trust was a family trust, and the income was retained in the family group.¹³ The grantors had substantial other income in each year, in excess of their normal needs, so far as the record shows. (R. 48-61, 138-148.) Thus, the relinquishment of the right to receive income of the trust did not mean much economically and may well be balanced by other rights of control which they retained. Cf. *Stockstrom v. Commissioner, supra*; *Commissioner v. Buck*, 120 F. 2d 775 (C. C. A. 2d); *George v. Commissioner*, 143 F. 2d 837 (C. C. A. 8th).

The grantors named themselves trustees, and retained the power to name successor trustees. (R. 73-74.)

As trustees they retained powers of management and control over the trust corpus as though they were absolute owners. They could hold securities in their own names. They could invest and reinvest the corpus, lend it, sell it, exchange, lease, or mortgage, all at prices and upon such terms as they deemed advisable. (R. 62-66.) Their discretion was absolute and uncontrolled, and its exercise conclusive on all persons.¹⁴

¹³ Children of the settlor are members of the intimate family group, even though they are adults and married. *Commissioner v. Wilson*, 125 F. 2d 307, 310 (C. C. A. 7th); and see *Commissioner v. Berolzheimer*, 116 F. 2d 628 (C. C. A. 2d).

¹⁴ In view of their absolute discretion, the exercise of which was conclusive on the beneficiaries, the power of the grantor-trustees was for practical purposes independent of the control of a court of equity. See Section 2269, Civil Code of California (Appendix, *infra*); *Cox v. Commissioner*, 110 F. 2d 934 (C. C. A. 10th), certiorari denied, 311 U. S. 667; *Rollins v. Helvering*, 92 F. 2d 390 (C. C. A. 8th), certiorari denied, 302 U. S. 763. In *White v. Higgins*, 116 F. 2d 312 (C. C. A. 1st) the trustee, who was also

(R. 65.) In *Central Nat. Bank v. Commissioner*, 141 F. 2d 352 (C. C. A. 6th), the power to direct the investment and reinvestment of the trust funds was the pivotal factor on which, with respect to one of the trusts, application of the *Clifford* doctrine turned. See also *Whitely v. Commissioner, supra*.

They could vote the stocks forming the corpus of the trust and otherwise deal with them as an absolute owner. (R. 65.) This is a very valuable right of ownership, particularly since the grantors owned individually shares in the same company and Mr. Gaylord was connected with the management of the corporation. The retention of voting rights enables the grantor more effectively to impose his will on the corporation and may be a more substantial economic benefit to him than the right to receive income on the shares. See *Helvering v. Stuart, supra*, p. 169; *Miller v. Commissioner, supra*; *Stockstrom v. Commissioner, supra*; *Bush v. Commissioner*, 133 F. 2d 1005 (C. C.

grantor of a trust of an insurance policy, had the power at any time to demand the cash surrender value of the policy, and if she deemed it advisable for her own comfort, maintenance, or welfare, to pay the whole or any part of the corpus over to herself individually. The court said (p. 320) :

"Granting that these are fiduciary powers, so were the powers of control over investment which the court regarded as significant in the *Clifford* case. With such a vague criterion of judgment prescribed in the trust instrument, it is highly improbable that anyone could successfully invoke the power of a court of equity to upset a decision by Mrs. Higgins as trustee to terminate the trust by assignment of the trust property to herself individually. It is equally improbable that anyone of the "intimate family group" would ever attempt to do so."

And see *Stockstrom v. Commissioner* (C. C. A. 8th), decided March 23, 1945 (1945 P-H, par. 72, 465).

A. 2d); *Williamson v. Commissioner*, *supra*; *McKnight v. Commissioner*, 123 F. 2d 240 (C. C. A. 8th).

They had the whole title to the property, legal and equitable, the beneficiaries having only the right to enforce the performance of the trust. (R. 66.)

They had the power under California law to revoke the trust, and thus retake the corpus. Cf. *White v. Higgins*, *supra*.

Although the income was distributable annually to the beneficiaries (R. 67), the trustees could control the amount of income to be distributed. They could reduce, or even cut off, all income by exercising their powers to sell the corpus, and reinvesting in non-income-producing property; or by leasing the real property, acquired later, for little or no consideration; or by using their broad powers in other ways. Furthermore, the trust contained spendthrift provisions (R. 70); the beneficiaries therefore had no rights of ownership in or control over trust income until it was actually distributed.

One-half of the income could have been used in the years 1936 and until her marriage in 1937 to discharge the grantors' obligation, under Sections 196 and 197 of the Civil Code, to support their younger daughter (R. 68) who was not of age when the trust was created (Section 25, Civil Code of California).¹⁸ This power

¹⁸ Although Section 134 of the Revenue Act of 1942 (Appendix, *infra*) amended Section 167 of the Internal Revenue Code to provide that the mere possibility that trust income may be used to discharge a legal obligation of support of the grantor is not enough to tax it to the grantor, the amendment was not intended to remove this fact from consideration as one of the indicia of ownership that would make Section 22 (a) applicable. S. Rep. No. 627, 78th Cong., 1st Sess., pp. 68-69.

would have enabled them to use the income directly for their own economic benefit. Cf. *Douglas v. Willcuts*, 296 U. S. 1.

Upon termination of the trust,¹⁶ all of the trust estate then existing was to vest in the two principal beneficiaries (or their issue) share and share alike. (R. 69-70.) But in making distributions the trustees had the sole judgment and discretion to make divisions and allotments and to determine the relative values of the property, their acts to be conclusive on all interested persons. (R. 71.) By this control over valuation and distribution, the trustees could in effect vary the shares of the beneficiaries and indeed could distribute substantially the whole corpus to one beneficiary of their choosing. The retention of this power to control the ultimate distribution of the trust fund is, we submit, an important attribute of ownership.

Upon termination of the trust, there was a possibility that the trust corpus would revert to Mrs. Gaylord. (R. 69-70.) She as grantor therefore retained a remote interest in the corpus, and this fact is to be considered under Section 22 (a). See *Miller v. Commissioner* (C. C. A. 6th), decided February 13, 1945 (1945-P-H, par. 72,376).

The fact that the taxpayers may not necessarily become repossessed of the corpus and the income does not militate against the conclusion that they have the powers of an owner. It is sufficient that they control the family purse strings. *Stockstrom v. Commis-*

¹⁶ The maximum duration of this trust was for a period of about 10½ years, but it could terminate earlier. (See R. 68.)

sioner, *supra*; *George v. Commissioner*, 143 F. 2d 837 (C. C. A. 8th); *Warren v. Commissioner*, *supra*; and cf. *Helvering v. Stuart*, *supra*. Nor is the fact material that the powers are reserved as trustee rather than as grantor, when trustee and grantor are the same. In the *Clifford* case the donor's powers of control were reserved to himself as trustee and this has been true in other cases also. *Faerderer v. Commissioner*, 141 F. 2d 53 (C. C. A. 3d); *Stuckstrom v. Commissioner*, *supra*; *Miller v. Commissioner*, *supra*. And see Article 166-1 of Treasury Regulations 94 and 101, and Section 19.166-1 of Treasury Regulations 103 (Appendix, *infra*).

No one fact is decisive of the question, but when all the powers and controls which the grantors retained over the corpus and income are added together, their "bundle of rights" requires, we submit, that the trust income be taxed to them under Section 22 (a).

III

Section 167 also applies

Section 167 (a) (2) of the Revenue Act of 1936 (Appendix, *infra*) provides for taxing such part of the trust income to the grantor thereof as may in the discretion of the grantor, or some person not having a substantial adverse interest, be distributed to the grantor. While this language refers in terms only to distributions that may be made directly to the grantor, the Supreme Court in *Helvering v. Stuart*, 317 U. S. 154, 170, has construed it to cover income as to which there is a possibility that it may be distributed in dis-

charge of the grantor's legal obligation to support his minor children. In the instant case, one of the beneficiaries, entitled to receive half of the income, was a minor when the trust was created in 1935. She did not become 21 until May 31, 1937, but was married on May 29, 1937 (R. 195), at which time she was an adult. Section 25, Civil Code of California. Throughout 1936 and until May 29 in 1937, therefore, the grantors owed a duty to support her. Sections 196 and 197, Civil Code of California. Article IV of the trust instrument gives the trustees discretion to apply any part of the trust income to the use and for the proper care, maintenance, support, and education of the beneficiaries. (R. 68.) The possibility that one-half of the trust income for 1936 and the first five months of 1937 might be used to discharge the parental obligation is sufficient, under the *Stuart* case, to attribute income to this extent to the grantors under Section 167 (a) (2).

Section 134 of the Revenue Act of 1943 (Appendix, *infra*) amended Section 167 of the Internal Revenue Code by adding a new subsection (c) providing that income of a trust shall not be considered as taxable to the grantor merely because it may be used to discharge his legal obligation of support, but shall be taxed to him only to the extent that it is so used. The provision has retroactive effect to all prior years, but only if signed consents, as prescribed by the Commissioner, are filed that there shall be paid all taxes which would have been payable if subsection (c) had been a part of the law in earlier years.

The amendment made by Section 134, if applied to this case, would render inappropriate the Government's argument that Section 167 (a) (2) applies. No consents as required by the amendment have, however, been filed up to the present time. Consequently, the argument that Section 167 (a) (2) applies is presented, subject to possible withdrawal, if consents are filed.

IV

There is no estoppel against the Commissioner

The Commissioner is not estopped to contend that the trust income is taxable to the grantors in the years 1936-1939, inclusive, merely because he accepted, without adjustment, the gift tax returns for 1935 filed by the grantors and the income tax returns filed by the two beneficiaries for the years 1936-1939 in which they included the trust income. (Pet. Br. 61-67.) *Niles Cement Pond Co. v. United States*, 281 U. S. 357; *Mt. Vernon Trust Co. v. Commissioner*, 75 F. 2d 938 (C. C. A. 2d), certiorari denied, 296 U. S. 587. And even if acceptance of the returns could be construed as an assent that the returns correctly interpreted the tax effect of the trust instrument, which we do not concede, the Commissioner is not estopped to change his determination as to the legal effect of a given transaction. *Burnet v. Porter*, 283 U. S. 230; *Towningsen v. Commissioner*, 61 F. 2d 199 (C. C. A. 9th); *Knapp-Monarch Co. v. Commissioner*, 139 F. 2d 863 (C. C. A. 8th).

The mere fact that claims for refund of the gift taxes and the income taxes paid by the daughters were

barred when the deficiency letters were mailed to taxpayers has no bearing.¹⁷ In *Van Antwerp v. United States*, 92 F. 2d 871, this Court declined to hold the taxpayer estopped to claim a refund, even though the Government was barred by the statute of limitations, when the claim was filed, from assessing and collecting taxes due from his wife. See also *Helvering v. Brooklyn City R. Co.*, 72 F. 2d 274 (C. C. A. 2d).

Furthermore, to constitute estoppel there must be a misrepresentation of a fact or a wrongful misleading silence with respect to a fact. *Van Antwerp v. United States*, *supra*, p. 875; *United States v. S. F. Scott & Sons*, 69 F. 2d 728, 732 (C. C. A. 1st). A person knowing the facts or in a position to know them can not claim the benefit of estoppel. *Hull v. Commissioner*, 87 F. 2d 260 (C. C. A. 4th).

In this case the Commissioner has not misrepresented a fact or held his silence with respect to any fact. Moreover, since the taxpayers knew all the facts and were in a position to know their legal effect equally as was the Commissioner, there is no ground for estoppel against the Commissioner. The Tax Court's holding that, since estoppel had not been specifically pleaded, it was not an issue in the case (R. 205), is correct and is a further ground for rejecting the taxpayers' claim of estoppel. See *Tide Water Oil Co. v. Commissioner*, 29 B. T. A. 1208; *El Dorado Oil Works*

¹⁷ It may be noted that taxpayers were apparently on notice as to what the Commissioner's position was likely to be at least by the end of 1940. A report of an examination was submitted, dated December 21, 1940, and protests were filed, and several conferences held prior to the issuance of the deficiency letters. (R. 46, 136.)

v. Commissioner, 46 B. T. A. 994. Cf. *Helvering v. Brooklyn City R. Co.*, 72 F. 2d (C. C. A. 2d).

V

There is substantial evidence to support the Tax Court's findings of basis of the Menasha stock

The last question raised by taxpayers (Br. 69-80) relates to the basis for computing profit upon sales of Marathon stock made by taxpayers individually and by the Gaylord trust in the taxable years. The Marathon stock sold by the trust and Gertrude H. Gaylord was all acquired by gift from Gaylord and has the basis it would have in his hands under Section 113 (a) (2) of the Revenue Acts of 1936, 1938, and the Internal Revenue Code. Consequently, a determination of his basis decides the question for all the parties.

Gaylord acquired all the Marathon stock,¹⁸ plus bonds, in exchange for 3,357 shares of Menasha stock in 1927, in a non-taxable transaction on which gain or loss was not recognized under Section 203 (b) (2) of the Revenue Act of 1926, c. 27, 44 Stat. 9. The Marathon stock and bonds therefore under Section 204 (a) (6) of the Revenue Act of 1926 took the basis of the 3,357 Menasha shares for which they were exchanged. There is no dispute as to the manner of allocating the basis of the Menasha shares between the Marathon stock and bonds. (R. 212.)

The 3,357 shares of Menasha stock owned on October 31, 1927, were traced by the Tax Court as the remain-

¹⁸ One hundred shares sold in 1939 by Gaylord individually were acquired by him in 1933 for \$1,700. There is no dispute as to the basis for these shares. (R. 211.)

ing portion of the 1,975 shares of Menasha common stock acquired by Gaylord upon organization of Menasha in 1917, plus the 100% stock dividend thereon in 1925. (R. 212.)

The answer to the basis question, therefore, depends on the basis to Gaylord of the 1,975 Menasha common shares acquired in 1917, together with preferred shares, in exchange for 337 shares of Carton stock and \$152,161.11 in cash. The law in 1917 contained no provision for non-recognition of gain or loss upon reorganization exchanges, or for a carry-over of basis.¹⁹ The Tax Court therefore held (R. 214) that Gaylord, in 1917, realized gain or sustained loss upon the exchange equal to the difference between the fair market value of the Menasha shares acquired and his cost or other basis for his Carton stock. It held further that the basis for the Menasha shares was the basis of the Carton shares surrendered, increased by the gain realized or decreased by the loss sustained on the exchange; or in other words, the basis for the Menasha shares was the same as their fair market value when acquired. It found this value to be \$100 per share. (R. 208, 215.)

Taxpayers agree that the correct basis for the Menasha shares is their fair market value when acquired in 1917. (Br. 75.) They contest only the Tax Court's finding of fair market value. (See Br. 75-76.)

¹⁹ Section 2 (a) of the Revenue Act of 1916, c. 463, 39 Stat. 756, referred to by taxpayers (Br. 71, 72), contains merely the broad general definition of income. It says nothing about the basis for property, or cost thereof.

We submit that the Tax Court's finding of value is supported by substantial evidence and hence is conclusive in this Court. *Elmhurst Cemetery Co. v. Commissioner*, 300 U. S. 37.

Upon acquisition of the assets of Carton and Printing in 1917, Menasha issued its stock in an amount equal to the appraised value of the physical assets and the book value of the quick assets so acquired. It was reasonable for the Tax Court to accept these values as representing the value of the Menasha stock. This was the value which Clinedinst and Gaylord placed on the assets and stock at the time of the transaction and the value on which they based the consolidation. Gaylord specified that the consolidation would be effected on the basis of appraised value of physical assets and book value of quick assets, but certainly if Clinedinst had thought the appraised and book values very far out of line from the fair market values of the assets, he would not have traded on that basis. His interest in the enterprise was more than ten times that of Gaylord. (R. 207.)

The values of the assets behind a stock are an important factor in fixing its value. But here the assumption is warranted that the physical assets were appraised at their fair market value, since that would be the usual basis for appraisal; in any case, there is no evidence that they were not so appraised, and in fact the taxpayers stated in Exhibit G, attached to their petitions, that this value was the "actual value," (R. 93.) As to the quick assets, there is nothing to

show that their fair market value was greater than their book value, and in the usual case, quick assets, or liquid assets such as cash, notes, bonds, and other items readily convertible into cash, are carried on the books at their true value. Hence, in the absence of evidence to the contrary,²⁰ the Tax Court was justified in accepting these values as representing fair market values.

Of the 1,975 shares of Menasha common stock acquired by Gaylord in 1917, only 453.39 were acquired in exchange for his old stock. The remaining 1,521.61 shares were acquired from Clinedinst for a price of \$152,161.11, or \$100 per share. Whether this purchase be regarded as a separate transaction or only a step in the consolidation (Pet. Br. 76), the price fixed between the two parties as the sale price for the stock is additional evidence supporting the Tax Court's finding of value.

Taxpayers contend that the Tax Court acted arbitrarily in disregarding the evidence as to the earning power of the assets. But the Tax Court's opinion, on the contrary, shows that it did consider such evidence as there was regarding earning power. It discussed the evidence and stated that it had considered all the evidence in reaching its conclusion as to value. (R. 215.) An examination of the evidence as to earnings shows that it was not substantial enough to base a finding of value thereon.

²⁰ Taxpayers' contention is not that the assets were undervalued, but that the Menasha stock should be valued on the basis of earning power alone.

Gaylord testified (R. 367-368) as to the earnings in round figures of the three companies for the year 1917, and stated that if they had used "ten for one" earning capacity to value the Menasha stock, they would have had a value per share of \$600 (R. 370). This testimony is not supported by any evidence that a 10% rate of capitalizing earnings is reasonable or proper, except Gaylord's statement that it might be called "conservative" (R. 369), or that such a rate would result in a fair market value for the stock. Nor is there any evidence to show how the figures of earnings testified to by the witness were computed, or that they in fact represented true earnings of the three companies. Even if they did represent the real earnings, it is a well known fact, as the Tax Court pointed out (R. 215) that corporate earnings during the war years were abnormally high in most cases and without some proof that such earnings were normal, they would not afford a proper foundation on which to value stock by the capitalization of earnings method.

The only other evidence in the record relating to capitalization of earnings is that in Exhibit G, attached to the petition. (R. 92-96.) There figures purporting to represent earnings of the three companies for the years 1915-1919, inclusive, are set out (R. 94), but again there is no proof as to the correctness of the figures or how they were arrived at. It is also stated in Exhibit G that "Taxpayer believes that the 1917 earnings of the Carton Company capitalized at ten per cent reflect correctly the fair market value

of the stock of that company * * *. (R. 94.) But there is no supporting data to show on what the belief is based.

In this state of the record, there was no evidence on which the Tax Court could have made a finding of fair market value by the capitalization of earnings method, had it felt that method was proper under the facts of this case. Consequently, the Tax Court did not act arbitrarily in not basing its finding of 1917 value on this evidence.

Taxpayers apparently contend (Br. 80) that the 352 shares of Menasha stock, exchanged in 1925 for Robert Gaylord stock and then reacquired in 1927 in exchange for the same Gaylord stock, as though the first exchange had never existed, carry a different basis. We submit that the effect of the two exchanges was to cancel out the transaction entirely, as the parties intended, and that the 352 shares retain their original basis. This appears to have been the view of the Tax Court also. However, if the two exchanges are to be singled out and given separate effect, contrary to the Tax Court's treatment of the matter (cf. *Dobson v. Commissioner*, 320 U. S. 489, rehearing denied, 321 U. S. 231), taxpayers must fail in any event since there is no evidence as to the fair market value of, or the basis for, the 352 shares in 1927. Although taxpayers refer to a fair market value for 352 shares set out in a computation attached to their petitions (R. 96, 186), this figure is not substantiated in any way.

CONCLUSION

The decisions of the Tax Court should be affirmed.
Respectfully submitted,

SAMUEL O. CLARK, JR.
Assistant Attorney General.

SEWALL KEY,

J. LOUIS MONARCH,

HELEN GOODNER,

Special Assistants to the Attorney General.

APRIL, 1945.

APPENDIX

Civil Code of California (1937):

SEC. 25. *Minors, who are: Construction of section: Married female deemed adult.*—Minors are all persons under twenty-one years of age; provided, that this section shall be subject to the provisions of the titles of this code on marriage and shall not be construed as repealing or limiting the provisions of section 204 of this code; provided, further, that any female who has contracted a lawful marriage and is of the age of eighteen or over, shall be deemed to be of the age of majority and to be an adult person for the purpose of entering into any engagement or transaction respecting property or her estate, or for the purpose of entering into any contract, the same as if she was twenty-one years of age. [Enacted 1872; Amended by Stats. 1927, p. 1119; Stats. 1931, p. 1941.]

SEC. 196. *Obligation of parents for the support and education of their children.*—The parent entitled to the custody of a child must give him support and education suitable to his circumstances. If the support and education which the father of a legitimate child is able to give are inadequate, the mother must assist him to the extent of her ability. [Enacted 1872.]

SEC. 197. *Custody of legitimate child.*—The father and mother of a legitimate unmarried minor child are equally entitled to its custody, services and earnings. If either the father or mother be dead or unable or refuse to take the custody or has abandoned his or her family, the other is entitled to its custody, services and earnings. [Enacted 1872; Amended by Code Amdts. 1873-74, p. 194; Stats. 1913, p. 52.]

SEC. 2215. *Trusts classified*.—A trust is either:

1. Voluntary; or,
2. Involuntary. [Enacted 1872.]

SEC. 2216. *Voluntary trust, what*.—A voluntary trust is an obligation arising out of a personal confidence reposed in, and voluntarily accepted by, one for the benefit of another. [Enacted 1872.]

SEC. 2217. *Involuntary trust, what*.—An involuntary trust is one which is created by operation of law. [Enacted 1872.]

SEC. 2269. *Discretionary powers*.—A discretionary power conferred upon a trustee is presumed not to be left to his arbitrary discretion, but may be controlled by the proper court if not reasonably exercised, unless an absolute discretion is clearly conferred by the declaration of trust. [Enacted 1872.]

SEC. 2280. *Revocation of trusts*.—Unless expressly made irrevocable by the instrument creating the trust, every voluntary trust shall be revocable by the trustor by writing filed with the trustee. When a voluntary trust is revoked by the trustor, the trustee shall transfer to the trustor its full title to the trust estate. Trusts created prior to the date when this act shall become a law shall not be affected hereby. [Enacted 1872; Amended by Stats. 1931, p. 1955.]

Revenue Act of 1936, c. 690, 49 Stat. 1648:

SEC. 22. GROSS INCOME.

(a) *General Definition*.—"Gross income" includes gains, profits, and income derived from salaries, wages, or compensation for personal service, of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business

carried on for gain or profit, or gains or profits and income derived from any source whatever. * * *

SEC. 166. REVOCABLE TRUSTS.

Where at any time the power to revest in the grantor title to any part of the corpus of the trust is vested—

(1) in the grantor, either alone or in conjunction with any person not having a substantial adverse interest in the disposition of such part of the corpus or the income therefrom, or

(2) in any person not having a substantial adverse interest in the disposition of such part of the corpus or the income therefrom.

then the income of such part of the trust shall be included in computing the net income of the grantor.

SEC. 167. INCOME FOR BENEFIT OF GRANTOR.

(a) Where any part of the income of a trust—

(1) is, or in the discretion of the grantor or of any person not having a substantial adverse interest in the disposition of such part of the income may be, held or accumulated for future distribution to the grantor; or

(2) may, in the discretion of the grantor or of any person not having a substantial adverse interest in the disposition of such part of the income, be distributed to the grantor; or

(3) is, or in the discretion of the grantor or of any person not having a substantial adverse interest in the disposition of such part of the income may be, applied to the payment of premiums upon policies of insurance on the life of the grantor (except policies of insurance irrevocably payable for the purposes and in the manner specified in section 23 (o), relating to the so-called "charitable contribution" deduction):

then such part of the income of the trust shall be included in computing the net income of the grantor.

(b) As used in this section, the term "in the discretion of the grantor" means "in the discretion of the grantor, either alone or in conjunction with any person not having a substantial adverse interest in the disposition of the part of the income in question".

Sections 22 (a) and 166 of the Revenue Act of 1938, c. 289, 52 Stat. 447, and the Internal Revenue Code are the same as the above quoted sections.

Revenue Act of 1943, Public Law 235, 78th Cong., 2d Sess:

SEC. 134. TRUSTS FOR MAINTENANCE OR SUPPORT OF CERTAIN BENEFICIARIES.

(a) *Income for Benefit of Grantor.*—Section 167 (relating to income for benefit of grantor) is amended by adding at the end thereof the following subsection:

"(c) Income of a trust shall not be considered taxable to the grantor under subsection (a) or any other provision of this chapter merely because such income, in the discretion of another person, the trustee, or the grantor acting as trustee or cotrustee, may be applied or distributed for the support or maintenance of a beneficiary whom the grantor is legally obligated to support or maintain, except to the extent that such income is so applied or distributed. In cases where the amounts so applied or distributed are paid out of corpus or out of other than income for the taxable year, such amounts shall be considered paid out of income to the extent of the income of the trust for such taxable year which is not paid, credited, or to be distributed under section 162 and which is not otherwise taxable to the grantor."

(b) *Taxable Years to Which Applicable.*—

(1) *General rule.*—Except as provided in paragraph (2), the amendments made by subsection (a) shall be applicable with respect to taxable years beginning after December 31, 1942, unless a taxable year of the trust beginning in 1942 ends within a taxable year of the grantor beginning in 1943, in which case, except as provided in paragraph (2), such amendments shall not be applicable to such taxable year of the grantor.

(2) *Retroactive effect.*—The amendments made by subsection (a) shall also be applicable with respect to all taxable years to which such amendments are not made applicable under paragraph (1), in the same manner as if such amendments had been a part of the revenue laws applicable to such taxable years, but only if there are filed with the Commissioner (in accordance with regulations prescribed by him with the approval of the Secretary) at such time and by such persons as may be prescribed under such regulations, signed consents that there shall be paid, at such time as the Commissioner may prescribe, all of the taxes under Chapter 1 of the Internal Revenue Code or under the corresponding provisions of prior revenue laws which would have been paid for the taxable years concerned if such amendments had been a part of the revenue laws applicable to such taxable years.

(3) *Deficiencies and overpayments.*—The period of limitations provided in sections 275 and 276 of the Internal Revenue Code or corresponding provisions of a prior revenue law on making of assessments and the beginning of distraint or a proceeding in court for collection shall with respect to any deficiency resulting from any such consents include one year immediately after the date such consents were filed, and such assessment and collection may be made notwithstanding any provision of the

internal revenue laws or any rule of law which would otherwise prevent such assessment and collection. The period within which claim for credit or refund may be filed, or credit or refund allowed or made if no claim is filed, with respect to any overpayment by the grantor resulting from the consents shall include one year immediately after the date of the filing of the consents, and credit or refund may be allowed or made notwithstanding any provision or rule of law (other than this subsection, section 3760 of the Internal Revenue Code or a corresponding provision of prior law, relating to closing agreements and section 3761 of the Internal Revenue Code or a corresponding provision of prior law, relating to compromises) which would otherwise prevent such credit or refund. No interest shall be allowed or paid on any overpayment, or assessed on any deficiency, resulting from the application of paragraph (2) of this subsection.

Treasury Regulations 94, promulgated under the Revenue Act of 1936:

ART. 166-1. *Trusts, with respect to the corpus of which, the grantor is regarded as remaining in substance the owner.*—(a) If the grantor of a trust is regarded, within the meaning of the Act, as remaining in substance the owner of the corpus thereof, the income therefrom is not taxable in accordance with the provisions of sections 161, 162, and 163 but remains attributable and taxable to the grantor. This article deals with the taxation of such income. As used in this article, the term "corpus" means any part or the whole of the property, real or personal, constituting the subject matter of the trust.

(b) Section 166 defines with particularity instances in which the grantor is regarded as in substance the owner of the corpus by reason of the fact that he has retained power to reves

the corpus in himself. For the purposes of this article the grantor is deemed to have retained such power if he, or any person not having a substantial interest in the corpus or the income therefrom adverse to the grantor, or both, may cause the title to the corpus to revest in the grantor. If the title to the corpus will revest in the grantor upon the exercise of such power, the income of the trust is attributed and taxable to the grantor regardless of—

(1) whether such power or ability to retake the trust corpus to the grantor's own use is effected by means of a power to revoke, to terminate, to alter or amend, or to appoint;

(2) whether the exercise of such power is conditioned on the precedent giving of notice, or on the elapsing of a period of years, or on the happening of a specified event;

(3) the time at which the title to the corpus will revest in the grantor in possession and enjoyment, whether such time is within the taxable year or not, or whether such time be fixed, determinable, or certain to come;

(4) whether the power to revest in the grantor title to the corpus is in the grantor, or in any person not having a substantial interest in the corpus or income therefrom adverse to the grantor, or in both. A bare legal interest, such as that of a trustee, is never substantial and never adverse;

(5) when the trust was created.

But the provisions of section 166 are not to be regarded as excluding from taxation to the grantor the income of other trusts, not specified therein, in which the grantor is, for the purposes of the Act, similarly regarded as remaining in substance the owner of the corpus. The grantor is regarded as in substance the owner of the corpus, if, in view of the essential nature and purpose of the trust, it is apparent that the grantor has failed to part permanently and

definitely with the substantial incidents of ownership in the corpus.

In determining whether the grantor is in substance the owner of the corpus, the Act has its own standard, which is a substantial one, dependent neither on the niceties of the particular conveyancing device used nor on the technical description which the law of property gives to the estate or interest transferred to the trustees or beneficiaries of the trust. In that determination, among the material factors are: The fact that the corpus is to be returned to the grantor after a specific term; the fact that the corpus is or may be administered in the interest of the grantor; the fact that the anticipated income is being appropriated in advance for the customary expenditures of the grantor or those which he would ordinarily and naturally make; and any other circumstances bearing on the impermanence and indefiniteness with which the grantor has parted with the substantial incidents of ownership in the corpus.

* * * * *

Article 166-1 of Treasury Regulations 101, promulgated under the Revenue Act of 1938, and Section 19.166-1 of Treasury Regulations 103, promulgated under the Internal Revenue Code, are substantially the same as the above quoted article.

